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J. S. Sewall
1837

A

COLLECTION

OF

CASES

OVERRULED, DOUBTED,

OR

LIMITED IN THEIR APPLICATION.

TAKEN FROM

AMERICAN AND ENGLISH REPORTS.

BY SIMON GREENLEAF,
COUNSELLOR AT LAW.

PORTLAND:
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1821.

DISTRICT OF MAINE. ss,

BE IT REMEMBERED, That on this twelfth day of July, in the year of our Lord one thousand eight hundred and twenty one, and the forty sixth year of the Independence of the United States of America, Simon Greenleaf, Esq. of the District of Maine, has deposited in this Office, the title of a Book, the right whereof he claims as author, in the words following, viz.

"A Collection of Cases overruled, doubted, or limited in their application. Taken from American and English Reports. By Simon Greenleaf, Counsellor at Law. Portland: Printed by Arthur Shirley. 1821."

In conformity to the Act of the Congress of the United States, entitled, "An Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned;" and also, to an act, entitled, "An Act supplementary to act, entitled, an act for the encouragement of learning by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

JOHN MUSSEY, JUN.
Clerk of the District Court of Maine.

A true copy as of record.
Attest—JOHN MUSSEY, JUN.
Clerk D. C. Maine.

ADVERTISEMENT.

The following collection was intended as an appendix to the edition of Hobart's Reports, *now in preparation for the press. But some respected friends, to whom the manuscript was known, having advised its separate publication, I concluded to print a few copies ; in order to obtain the judgment of the profession as to the utility of the work, and the manner of its execution, and their aid in augmenting the collection should this attempt be favorably received.*

It afterwards occurred to me, that as the Rules of practice in the several Courts of the United States are in the hands of but few lawyers, it would be rendering an acceptable service to the profession at large, to place them together at the end of this collection.

S. GREENLEAF.

Portland, Dec. 5, 1821.

Vide. List of cases in
Chuches N. York Digest Vol 1. page 176

3 Wackey Am. Digest has 319 cases
not in this collection -

CASES, &c.

Adams *v.* Lingard & al. *Peake's N. P. Ca.* 117.

That the indorser of a bill of exchange may be admitted a witness to invalidate it.
Denied in *Churchill v. Suter* 4. *Mass.* 156. *Vid.* also *Warren v. Merry* 3. *Mass.* 27. *Parker v. Lovejoy, ib.* 565.

Adlington *v.* Cann 3. *Atk.* 141.

Overruled *per Thompson B.* 3. *Anstr.* 941.

African Company *v.* Bull 1 *Show.* 162. *Gilb.* 238.

That where a policy is subscribed by several, and the goods not equal in value to the whole sums subscribed, the underwriters shall be liable in the order in which they subscribed, and the remaining underwriters be discharged.
Overruled. *Vid. Marshall on Ins.* 116. *and seq. Newby v. Reed* 1. *Bl.* 416.

Alcinbrook *v.* Hall 2. *Wils.* 309.

That money lent for a purpose prohibited by law may be recovered.
Overruled in *Clayton v. Dilly* 4. *Taunt.* 165. *Vid. Faikney v. Reynous, post.*

Alexander *v.* Comber 1. *H. Bl.* 20.

The observation of *Wilson J.* that where the sale is not *immediate*, it is not within the Statute of Frauds.
Overruled in *Rondeau v. Wyatt* 2. *H. Bl.* 63.

Aleyn's Reports.

Mr. Justice *Dolben* said "the publisher had much wronged the author; that he had the original manuscript, and had compared them, and found it to be mistaken in several cases, even as to the very resolutions of the Court." 2 *Show.* 164.

Allan *v.* Bower 3. *Bro. Ch. Ca.* 149.

There was a paper found signed by *Bower* deceased, saying it was reasonable to grant Plf. a lease, on account of the improvements he had made: which *Ld. Thurlow* seemed to think satisfied the statute of frauds.
But the general grounds of this opinion in this case [and in *Tawney v. Crowther*] are questioned by *Ld. Redesdale* in *Clinan v. Cooke* 1. *Sch. and Lefr.* 33–37.

Allesbrook *v.* Roach 1. *Esp.* 351.

The *jury* were allowed by *Ld. Kenyon* to decide the genuineness of a bill of exchange, by *comparing* it with other signatures admitted to be the Deft's.

Contrary to the prior case of *Bookbard v. Woodley* cited in *Peake's N. P. Ca.* 21. *n.* and to the subsequent case of *Da Costa v. Pym, Peake's Ev. app.* lxxii. where *Ld. Kenyon* cites with approbation the rule of *Bookbard v. Woodley.*

Allingham *v.* Flower & *al.* 2 *Bos. & Pul.* 246.

Held in *Birn v. Bond* 6. *Taunt.* 554. to be inconsistent with prior cases, and overruled. *Vid. How v. Lacy* 1. *Taunt.* 119.

Ambrose *v.* Hopwood 2. *Taunt.* 61.

That if in an action against the acceptor of a bill of exchange accepted to be paid at a particular banking house, the declaration omit to state that it was presented there for payment, it is bad.

Denied, *arguendo*, in *Callaghan v. Aylett* 2. *Campb.* 549. and overruled in *Fenton v. Goundry* 13 *East* 459.

Anonymous *Sav.* 70. *pl.* 145.

Overruled in *Doe v. Redfern* 12 *East* 113.

Anonymous 1 *Freem.* 450. *pl.* 612.

Overruled. *Hayes v. Bickerstaff Vaugh.* 122. *Dudley v. Folliot* 3. *D. & E.* 584.

Anonymous *Mosely*, 96.

Overruled in *Elliot v. Merryman, Barn. Ch. Rep.* 78. 2. *Atk.* 41. *Ambler*, 189. *n.* 676. 6. *Ves. jr.* 654. *n.*

Anonymous *Godb.* 2. *pl.* 2. *Moor* 54. *pl.* 157.

Overruled. *Young v. Radford.* 1, *Brownl.* 129. *Hob.* 3. *Gage v. [illegible] ton*, 1. *Salk*, 326.

Anonymous *Godb.* 10. *pl.* 14.

Overruled. *Bond v. Richardson Sav.* 96. *Cro. El.* 142. *S. C.* 1. *Freem.* 526. *Jenk.* 58. *in marg. Bridgm.* 91. 7. *Mod.* 231. 10 *Mod.* 147, *acc.*

Anonymous *Godb.* 157. *pl.* 213.

Overruled. *Challenor v. Thomas Yelv.* 143. 1. *Brownl.* 142. *S. C.*

Anonymous 1. *Salk.* 126. *pl.* 6.

This is probably the same case with 1. *Salk.* 127. *pl.* 9. and is overruled. *Vid. Lambert v. Pack, post.*

Anonymous 1. *Bulstr.* 184.

Where it is said that an umpirage would be vitiated by the arbitrators' joining in it.

This case is said to be "a mistake, an error of the reporter." *Soulsby v. Hodgdon.* 3. *Burr.* 1474.

Anonymous 2. *Salk.* 413. *pl.* 2. 4.

Lease for a year, and so from year to year *quamdiu*, &c. adjudged to be a lease for two years and afterwards at will.

Denied 1. *D. & E.* 380. where these are called "loose notes, jumbled together with others, and not to be relied on."

Anonymous 1. *Comyn*, 15.

That an Executor may traverse the devise of an executorship to another. Also, that payment to an executor having probate, if the probate is afterwards repealed, does not discharge the party against the legal executor.

Both these points are denied by *Buller J.* who says this case "carries its own death wound on the face of it." 3. *D. & E.* 130. 131.

Anonymous 1. *Lev.* 68.

Where *Bridgman* is made to say that imprisonment by the king's writ will not be duress to avoid a deed, though the arrest be without cause of action, &c. "This must be a mistake." Said *per Parsons, C. J.* 6. *Mass.* 512.

Anonymous *Hardr.* 485. That debt does not lie upon a bill of exchange

Overruled, in *Rabourg v. Peyton* 2. *Wheat.* 385.

Anonymous.

Cited in *Bristow v. Waddington* 5. *Bos. & Pul.* 360.
Questioned in *Powell v. Saunders* 5. *Taunt.* 28.

Anonymous *Cowp.* 128.

In debt on judgment exceeding 10. *l.* in the whole, though the original debt was less than 10. *l.* it was said that Deft. could not be holden to special bail.

Overruled in *Lewis v. Pottle*, 4. *D. & E.* 570.

Anonymous 2. *Salk.* 642.

Overruled in *Taylor v. Eastwood*, 1. *East* 216.

Anonymous 1. *Vern.* 105.

"I can by no means admit the latitude in the *anon.* case 1. *Vern.* 105. or rather that note of a case." *Per Ld. Hardwicke, in Dormer v. Fortescue*, 3. *Atk.* 129.

Anonymous 1. *Salk.* 278.

That the statute of limitations may be given in evidence upon *nil debet.*

Parsons, C. J. said this was merely a *dictum* of *Ld. Holt*, and has since been overruled. *Pearsall v. Dwight*, 2. *Mass.* 87. *Lindo v. Gardiner*, 1. *Cranch* 344. *ib.* 465. *app.* 1. *Morg. V. M.* 220.

Archbishop of Canterbury *v.* Kemp, *Cro. El.* 539.

Contradicted by *Crogate's* case, 8. *Rep.* 67. *Vid. also Cockerell v. Armstrong*, 2. *Com.* 582. *Jones v. Kitchen*, 1. *Bos. & Pul.* 79.

Armistead *v.* Philpot. *Doug.* 231.

That if Plf. cannot find sufficient effects to satisfy his judgment, the Court will order the Sheriff to retain, for Plf's use, money levied in another action, at the suit of the Deft.

Overruled in *Fieldhouse v. Croft* 4. *East* 510. *Vid. Turner v. Fendall* 1. *Cranch* 117. But in *New York* the doctrine of *Armistead v. Philpot* was admitted in *Ball v. Ryers* 3. *Caines* 84.

Artaza *v.* Smallpiece 1. *Esp.* 23.

Overruled in *Cock v. Taylor & al.* 13. *East* 399.

Assievedo *v.* Cambridge 10. *Mod.* 77.

This case recognizes the legality of a wager policy ; a doctrine not admitted in *Massachusetts*. *Amory v. Gilman* 2. *Mass.* 1.

Atkins' Reports. *Temp. Hardwicke.*

——" is a book which, of late, has been often questioned." 2. *Woodd. Lect.* 362.

" It was the misfortune of *Ld. Hardwicke*, and of the public in general, to have many of his determinations published in an incorrect and slovenly way." *Per Buller J.* in *Lickbarrow v. Mason* 6. *East.* 29 *in note.*

Atkins *v.* Barwick 1. *Str.* 165.

Ld. Mansfield observed of this case that the judgment seemed to be right, but the reasons wrong. *Cowp.* 125.

Atto. Gen. *v.* Bowles 2 *Ves.* 547. 3. *Atk.* 806.

" The authority of this case has been shaken ; & it is one of *Ld. Hardwicke's* decisions that I cannot entirely concur in." *Per Sir P. Arden in Atto. Gen. v. Whitechurch* 3 *Ves. jr.* 141. And see *Belt's Suppt. to Vesey's Rep.* 404. *S. P.*

Austin *v.* White *Cro. El.* 214.

Charge of having had a contagious disorder held good. Denied in *Carslake v. Mapledoram* 2. *D. & E.* 473.

Ayer *v.* Aden *Yelv.* 44.

Misreported. *Vid. Cro. Jac.* 73. *Moor* 757. *Wilbraham v. Snow* 2. *Saund.* 47.

Ainslee v Martin 9 Mass 454

This case adopts the strict principle of the common law, that a citizen cannot expatriate himself in any case. But the case of Kilham v Ward 2 Mass 236 — in the 2 ed 244 note & the 16 of ed 230 recognise the principle that upon the partition of a territory between two sovereigns the allegiance of the inhabitants is transferred to the sovereign within whose part of the territory they at that time voluntarily reside

Allen v Aequire 15 Mass 490

That if the goods a debtor in the hands of a third person can be come at to be attached, such person cannot be summoned as the trustee of the debtor in a foreign attachment

Overruled in 16 Mass 318

Tyler v Jewett 2 Bc. Rep 199

That the testimony of Jurors may be received to prove a misdemeanour in the Jury themselves in the finding of their verdict

Overruled in 2 Starkie 111 = 4 Johns 487
4 Bin. 155 = 14 Mass 248 —

Attree v Scott 6 East 476
Overruled in 2 Bingham 273
Atty v Parish 4 Bos & Pul 104
Doubted & the effect overruled in 4
Bamwell & Cresswell 962 —
Anonymous 4 Leonard 184 S. C. God.
folb. 133 —
Loosely reported and overruled in
2 Barn & Ald. 574 —

Bacon *v.* Waller 1. *Roll. Rep.* 387. 3. *Bulstr.* 204. *Co. Lit.* 46. *b.*

That "*from the date,*" and "*from the day of the date,*" mean both the same thing, and that both are *exclusive.*

Agreed that they both mean the same thing; but resolved that, "*from*" may mean *inclusive*, or *exclusive*, according to the subject matter; and that it should be so construed as to *effectuate* the deeds of parties, not to *destroy* them. *Pugh. v. D. of Leeds Cowp.* 714. *Vid. Presbrey v. Williams* 15. *Mass.* 193.

If a note be payable in certain days from the date, the day of the date is *exclusive. Henry v. Jones* 8. *Mass.* 453.

Backster's case, cited in *Cro. Jac.* 430.

Charge of *having had* a contagious disorder, held actionable.

Denied in *Carslake v. Mapledoram* 2. *D. & E.* 473.

Bagg's case, 2d resolution, 11. *Rep.* 99.

From the second resolution in this case it has been collected that a corporation has no power of amotion, unless given by charter or prescription.

But this position is denied in *Rex v. Richardson*, 1. *Burr.* 539. where it is holden that the power of amotion for good cause is incident to every corporation, as much as the practice of making by-laws. *Vid.* also *Lord Bruce's case* 2. *Str.* 819.

Bailey *v.* Nickols 2. *Root*, 407.

Held in *Connecticut* that the law *implies* a warranty that the thing sold is what it is held out to be; and if it is not, the seller must make good the damage, *whether he knew of any defect or not.*

Contrary to *Pickering v. Dowson* 4. *Taunt.* 779. *Emerson v. Brigham* 10. *Mass.* 197. *Baglehole v. Walters* 3. *Campb.* 154. *Chandelor v. Lopus Cro. Jac.* 4. *Dowding v. Mortimer* 2. *East* 450. *in notis.*

Baker v. Berisford 1. *Sid.* 76.

Ld. Kenyon spoke slightly of this case, in *Cutts v. Vernon* 3. *D. & E.* 589.

Balmanno *v.* Lumley 1. *Vesey and Beame* 224.

Corrected in *Bonner v. Johnstone* 1. *Merivale R.* 372. & see *Harford v. Purrier* 2. *Maddock Ch. R.* 532. 533. *note.*

Barclay *v.* Gooch 2. *Esp.* 571.

Doubted and shaken since *Taylor v. Higgins* 3. *East*, 169.

Barclay *v.* Lucas 1. *D. & E.* 291. *n.*

Bond for fidelity of banker's clerk: plea, introduction of new partner into the firm: and held bad: for that the bond was to the *house*, and not to the *persons* of the partners.

"The propriety of this decision has been very much questioned." *Per Mansfield C. J.* in *Weston v. Barton* 4. *Taunt.* 673. *Vid. Ld. Arlington v. Merrick* 2. *Saund.* 411. *Williams' ed. note* (5)

Barnes.

"Many of the cases reported in that book are not law." *Per Heath J.* 3. *Bos. & Pul.* 245.

"Has in general reported the *practice* of the Court with accuracy." *Per Buller J.* 1. *Bos. & Pul.* 333.

Barnardiston's Reports in Chancery.

"*Ld. Mansfield* absolutely forbid the citing of that book; for it would be only misleading students to put them upon reading it. He said it was marvellous, however, to those who knew the Sergeant, and his manner of taking notes, that he should so often stumble upon what was right; but yet that there was not one case in his book which was so throughout." 2. *Burr.* 1142. *in margine.*

Barnardiston's Reports in *B. R.*

"Not of much authority." *Doug.* 333. *n.* "Of still less authority than 10. *Mod.*" *Doug.* 689. *n.* "A bad reporter." *Per Ld. Kenyon* 1. *East*, 642. *n.*

Barnes *v.* Trompowsky 7. *D. & E.* 267.

The notion that the subscribing witnesses are *agreed* on between the parties to be the only witnesses to prove the instrument, "is, to speak with all possible delicacy, an absurdity." *Per Spencer J.* in *Hall v. Phelps* 2. *Johns.* 451.

Barret *v.* Glubb *Bac. Abr. Simony, A.*

Inaccurately reported, and some of its expressions doubted. *Greenwood v. Bishop of London* 5. *Taunt.* 727.

Barwell *v.* Brooks *H.* 24. *G.* 3. *B. R.*

Overruled in *Marshall v. Rutton* 8. *D. & E.* 545.

Bartlett *v.* Knight 1. *Mass.* 401.

That a judgment of a Court of another of the United States is not in all cases conclusive evidence of a debt, in an action brought thereon in *Massachusetts.*

Overruled in *Bissel v. Briggs* 9. *Mass.* 462. where it is holden that in such action of debt nothing is open to inquiry except the jurisdiction of the Court which rendered the original judgment.

Bawderock *v.* Mackaller *Cro. Car.* 330.

Overruled in *Lloyd v. Williams* 3. *Wils.* 262.

Bayley *v.* Bunning 1. *Sid.* 272.

Ld. Mansfield said this case was best reported in *Levinz*: and that "*Siderfin* does not seem to know what the Court was going upon." 1. *Burr.* 35. See also 3. *Lev.* 192.

Beauchamp *v.* Borret *Peake*, 109.

Annuity rescinded after two payments, and the purchaser was allowed to recover back the *whole* purchase money, and interest.

Denied *per Lord Ellenborough* in *Hicks v. Hicks* 3. *East*, 12.

Beck *v.* **Welsh** 1. *Wils.* 276.

Tenant in tail mortgages for years, becomes bankrupt, and dies, without suffering a common recovery: held that his assignee shall have the estate clear of the mortgage.

Powel calls this an anomalous case in the law of bankruptcy. *Mortg.* 255—and it is contradicted by *Pye v. Daubuz* 3. *Bro. Ch. Rep.* 595.

Belither *v.* **Gibbs** 4. *Burr.* 2117.

That bail should not be required in debt on judgment, when by reason of the smallness of the sum it could not be required in the original action, by *Stat.* 12. *G.* 1. *c.* 29.

Overruled in *Lewis v. Pottle* 4. *D. & E.* 570.

Bellasis *v.* **Burbrick** cited in 2. *Salk.* 413. *pl.* 2.

That a lease for a year, & so from year to year, during pleasure of the parties, was a lease for two years, and afterwards at will only.

Denied *per Buller J.* in *Birch v. Wright* 1. *D. & E.* 380. It is better reported in *Lutw.* 213.

Benson *v.* **Parry** cited 2. *D. & E.* 52.

"Long since overruled." *Per Vice Chancellor* in *Ex parte Henson.* 1. *Maddock Rep.* 112.

Bettison *v.* **Farringdon** 3. *P. W.* 363.

Subsequent cases appear to question the doctrine of this case on both its points. *Per Ld. Eldon* in the Princess of *Wales v. The Earl of Liverpool* 1. *Swanston. Rep.* 114. 121.

Beynon *v.* **Gollins** 2. *Bro. Ch. Ca.* 323. 2. *Dick.* 697.

This case has been supposed to warrant the position that feme covert executrix shall not be answerable to creditors at law, after the coverture, for waste done by the husband during coverture.

But the contrary is ruled in *Adair v. Shaw* 1. *Sch. & Lefr.* 243. by *Ld. Redesdale*, who says "the note in *Brown* is clearly erroneous in many points; and the note in *Mr. Dickens'* book is directly contrary, and equally erroneous, according to my recollection of the case."

Biddeford *v.* **Onslow** 3. *Lev.* 209.

The note of the reporter, that the Plf. (lessor) *during the term*, could not have maintained trespass, is denied in *Starr v. Jackson* 11. *Mass.* 519.

Bidwell *v.* **Cotton** *Hob.* 216.

Overruled in *Barber v. Fox.* 2. *Saund.* 137. *Porter v. Bille* 1. *Freem.* 125.

Bindstead *v.* **Coleman** *Bunb.* 65.

Ld. Redesdale thought there was no great dependence to be had on this case, it being uncertain whether what the *Chief Baron* is there made to say, was said in the case before the Court, or not. 1. *Sch. & Lefr.* 34.

Bird v. Randall 3. *Burr.* 1353.

"I am aware that in *Bird v. Randall Ld. Mansfield* is reported to have said that a former recovery need not be pleaded, but will be a bar when given in evidence. I cannot, however, accede to that; for the very first thing I learnt in the study of the law, was, that a judgment recovered must be pleaded." *Per Abbot C. J.* in *Voogt v. Winch* 2. *Barn. & Ald.* 662.

Bishop of London v. Fytche *Dom. Proc.* 1783.

That a general resignation bond from the incumbent to the patron is void. Doubted *per Ld. Kenyon in Bagshaw v. Bossley* 4. *D. & E.* 81. 82. *Vid.* also *Patridge v. Whiston* 4. *D. & E.* 359.

Blackstone's Commentaries.

"I am always sorry to hear *Mr. Justice Blackstone's* Commentaries cited *as an authority*: he would have been sorry himself to hear the book so cited: he did not consider it such." *Per. Ld. Redesdale* in *Shannon v. Shannon* 1. *Sch. and Lefr.* 327.

Blackstone's (Wm.) Reports.

"Not very accurate." *Per Ld. Mansfield Doug.* 92. *n.*

Blackwell *v.* Nash. 1. *Str.* 535.

A. covenanted to transfer stock, and B. to *pay for it*. Held that *in considerațione præmissorum* is in consideration of the *covenant* to transfer, not of the *actual* transfer. *Ld. Kenyon* speaking of this case says, "to the latter part of this judgment I cannot accede." *Goodison v. Nunn* 4. *D. & E.* 764. *Johnson v. Read* 9. *Mass.* 78.

Blakeway v. E. of Strafford, 2 *Eq. Ca. Abr.* 579.

Doubted *per Ld. Redesdale* 1. *Sch. & Lefr.* 109. Better reported in 2. *P. Wms.* 373.

Bland v. Haslerig 2. *Ventr.* 151.

Overruled in *Whitcomb v. Whiting Doug.* 651.

Bond v. Ward 7. *Mass.* 129.

That hay in a cock or barn is not liable to attachment. Overruled in *Campbell v. Johnson*, 11 *Mass.* 184.

Bonham's Case, 8 *Rep.* 121. a.

Ld. Coke here said that the cause of commitment by the censors of the College of Physicians was traversable. But this is denied by *Ld. Holt*, for that persons constituted with power to fine and imprison are thereby made judges of record, &c. *Groenvelt vs. Burwell* 1. *Com. Rep.* 79. 80.

Boson v. Sanford 3. *Lev.* 258. 3. *Mod.* 321. 2. *Salk.* 440. 1. *Show.* 29. 2. *Show.* 478.

Ld. Ellenborough said "this case had been shaken to its foundations in the main points which it assumed to determine. 3 *East* 89. *Vid.*

Abbot v. Smith. 2. *Bl. Rep.* 947. *Rice v. Shute* 5. *Burr.* 2613. 5. *D. & E.* 651.

Bostock v. Saunders 3. *Wils.* 434. 2. *Bl. Rep.* 912. *S. C.*

Overruled in *Cooper v. Booth* 3. *Esp.* 135. 148. 1. *D. & E.* 535.

Bower v. Taylor cited 7. *Taunt.* 574.

Overruled in *Touissant v. Hartopp* 7. *Taunt.* 571.

Boyd v. Heinzelmann 1. *Ves. and Beame* 381.

Overruled by *Mills v. Fry* 3. *Ves. & Beame* 9. *Anon.* 2. *Maddock Rep.* 395.

Brason v. Dean 3. *Mod.* 39.

Overruled in *Brewster v. Ketchell* 1. *Salk.* 198. *Vid.* also 2. *Eq. Ca. Abr.* 26. 3. *Bro. P. C.* 401.

Brennan v. Cament *Bul. N. P.* 45. 3. *Selw. N. P.* 1163. *Sayer* 224.

Much shaken by the reasoning of *Ld. Eldon* in *Cowill v. Simpson* 16. *Ves. jr.* 275. and of *Gibbs C. J.* 2. *Marsh. Rep.* 339. *Hutton v. Bragg* and see *Ex parte Lewis* 2. *Gallis.* 488.

Brewster v. Capper. 1. *Wils.* 261. 1. *Bl. Rep.* 51.

Overruled in *Doughty v. Lascelles* 4. *D. & E.* 520. *vid.* 7. *D. & E.* 447. *n.*

Brickwood v. Fanshaw *Show.* 96.

That *Stat.* 3. *Jac.* 1. c. 7. and 2. *Geo.* 2. *c.* 23. respecting the delivery of a bill of his fees, by an attorney, do not extend to business done in the inferior Courts.

Overruled in *Clark v. Donovan* 5. *D. & E.* 694.

Broadwaite v. Blackerby *Comb.* 465. 12. *Mod.* 163.

Denied *per Buller J.* in *Lane v. Wheat* 1. *Doug.* 313. *n. Vid. Comerford v. Price Doug.* 312.

Bro. Repleader 6.

"Debt vs. A. B. *super de Bristol*," &c. denied to be law. 1. *Str.* 312.

Brookes v. Cooke 1. *Show.* 57.

That an Executor cannot have an action *de jure suo proprio* for an escape of one in execution on a judgment obtained by him as executor.

Overruled in *Bonafous v. Walker* 2. *D. & E.* 126.

Brooks v. White 1. *Bos. & Pul. n. s.* 330.

See *Vaise v. Delaval, post,* aco.

Brook's case *Poph.* 126.

Overruled in *Fisher v. Wigg* 1. *P. Wms.* 14.

Brooks v. Rogers 1. *H. Bl.* 640.

A. drew a bill of exchange in favor of C. who indorsed it to D. and before it became due A. became bankrupt and obtained his certificate. Payment being refused, C. paid it to D. and was permitted in this action to recover it of A. notwithstanding his bankruptcy.

Overruled by *Ld. Loughborough* in *ex parte Seddon* and doubted in *Cowley v. Dunlop* 7. *D. & E.* 565. *Vid.* also *Buckler v. Buttivant* 3. *East* 71.

Brook v. Smith 1. *Salk.* 280.

Condemnation in foreign attachment, after action brought by the creditor against the trustee, cannot be given in evidence by the latter, under *non assumpsit.*

Contradicted by *Savage's case* 1. *Salk.* 291.

Brooks v. Brooks *Poph.* 126.

That in feoffments and grants, a party not named in the premises should not take by the *habendum.*

But where a grant was to J. T. [the *cestui que trust*] *habend'* to G. B. the trustee, the words of grant to J. T. were rejected as surplusage, and G. B. took by the *habendum.* *Spyve v. Topham* 3. *East* 115. Vid. also *Fisher v. Wigg.* 1. *P. Wms.* 17.

Brown v. Tierney 1. *Taunt.* 517.

If a ship be warranted free of capture or seizure in port or ports, a capture by an enemy's ship while the vessel insured is lying in an open road, outside of an harbor, is not within the warranty.

Mansfield C. J. in *Levy v. Vaughan* 4. *Taunt.* 387. said this case was very much shaken by the case of *Dalgleish v. Brooke* 15. *East* 306.

Brown v. London 1. *Ventr.* 152. 1. *Lev.* 298. 1. *Mod.* 285.

That *indebitatus assumpsit* would not lie upon the acceptance of a bill of exchange.

Contradicted by *Heylin v. Adamson* 2. *Burr.* 674. *Bishop v. Young* 2. *B. & P.* 78.

Brown v. Quilter *Ambl.* 619.

Questioned and overruled in *Hare v. Greve* 3. *Anstr.* 687. *and Holtzapffel v. Baker* 18. *Ves.* 115.

Brown v. Wotton *Yelv.* 67. *Cro. Jac.* 73. *Moor,* 762.

Trover for goods: plea of judgment and execution in favor of Plf. v. J. S. for the same goods, though no satisfaction shewn—and held good. Denied in *N. York. Livingston v. Bishop* 1. *Johns.* 291. *Vid.* also *Claxton v. Swift* 3. *Mod.* 86. 2. *Show.* 484. *Morton's case Cro. El.* 30. *Cooke v. Jenner Hob.* 66. *Corbett v. Barnes W. Jones* 377. *Bird v. Randall* 3. *Burr.* 1345.

Browning v. Wright 1. *Bos. & Pul.* 21.

The *dictum* of *Ld. Eldon,* who says that the words "grant, bargain, sell, enfeoff and confirm" import a covenant in law:—

Admitted, as applied to an estate for years; but denied in his own

application of them, to a deed in fee. *Per Kent C. J.* in *Frost v. Raymond* 2. *Caines* 195. *Vid.* authorities there cited: and *Gratz. v. Ewalt* 2. *Bin.* 95.

Brown v. Daukes *Cro. El.* 11.

The words "thou art a pillory knave," held actionable. Contradicted by *Smith's case Cro. El.* 31.

Brudnell v. Price *Finch* 365.

Paget v. Paget 2 *Ch. Ca.* 101.

"From the reports in which they [the above cases] are found, and the position they affirm, they are not entitled to any great attention." *Per Sir W. Grant*, in *Richards v. Chambers* 10. *Ves.* 580.

Bryan v. Horseman 4. *East.* 599.

"The cases on the statute of limitations had gone an enormous length. There had never been such another case as that cited." *Per Mansfield C. J.* in *Mucklow v. St. George* 4. *Taunt.* 613.

Bunbury's Reports.

"Mr. Bunbury never meant that those cases should be published: they are very loose notes." *Per Ld. Mansfield* 5. *Burr.* 2658.

Buller and Crips cited 1. *Com. Dig.* 191.

Overruled in *Grant v. Vaughan* 3. *Burr.* 1516.

Bull v. Palmer 2. *Lev.* 165.

Overruled in *Henshal v. Roberts* 5. *East.* 150. *Bollard v. Spencer* 7. *D. & E.* 358. *Vid.* 1. *Ld. Raym.* 437.

1. Bulstr. 177.

That "*from the date*" includes the day, and that "*from the day of the date*" excludes it. Overruled in *Pugh v. D. of Leeds Cowp.* 714.

Burges v. Player 1. *Freem.* 467.

Overruled in *Gutliffe v. Dunn, Barnes* 56. *Vid. Kyd on Awards* 263.

Burton v. Robinson 1. *T. Raym.* 124. 1. *Sid.* 246. *S. C.*

Overruled in *Herbert v. Waters* 1. *Salk.* 206. *Vid.* also *Chaney's case* 10. *Rep.* 119. *b.*

Bush v. Bates 5. *Burr.* 2260.

Judgment of nonsuit and for costs, and debt brought on this judgment, and special bail insisted on, as not being within 12. *G.* 1. c. 29. but refused.
Overruled in *Lewis v. Pottle* 4. *D. & E.* 570.

Butler v. Malissy 1. *Str.* 76.

That in case on a joint and several note, declaration that the Deft. & *al. conjunctim vel divisim* promised, is bad.
Overruled in *Rees v. Abbot Cowp.* 832.

Bird v Rickshaw 2 East 458
That the indorsee of a note who had received money of the maker to take it up was a competent witness for the maker to prove that he had paid over the money to the Pff. although he was liable to pay the costs if Pff prevailed, otherwise was not liable
Contradicted in 4 Taunt 464 - 14 East 565 = 16 Johns 70 = 2 Greenleaf 199

Blaney v Hendricks 2 Wm Black 761
which decided that interest due on all liquidated sums from the time when the principal becomes due & payable, has been long overruled in 2 Barn & Cresswell 368

Buckhardt v Pinkell 3 Bos & Pul 652 note
Not approved by Lord Alvanley but supported by Ch. J. Best in 2 Bing Rep. 447

Barker v Gingell 3 Esp 60
That the drawer of a Bill is admissible as a witness in an action against the acceptor.
Contradicted in 2 Greenleaf 199
& Cases cited under Bird v Rickshaw supra -

Bowey v Hurd 10 Mass 427

In this case a sick person desirous of leaving a legacy to a friend made a promissory note for the amount, in order to save the expense of a will, placing the note in the hands of a third person to be delivered after the decease of the promissor and deposited in other hands sundry personal securities expressly for the payment of this as well as all his other debts, and it was held that the promissee was entitled to maintain an action upon this note against the administrator of the promissor

But this case "has been doubted" Ch Parker C. J. in 3 Pick 427

Bird v Gardiner 10 Mass 364

The Language of Sewall J in this case seems to go the length of saying that the wife of a mortgagor could not be endowed of his equity of redemption

But in this case "although there are some general expressions which go further than the case required, yet the decision was only that the claim of dower could not be maintained against the mortgagee and his assigns" Ch C. J. Parker in 15 Mass 379

A Note of Land in Massachusetts is not entitled to grace, unless it be expressly made payable with grace

- 4 Mass. 251 -

Beck v Robley 1 H Black. 89 See note
That an indorsed bill of exchange having been paid by the drawer, thereby loses its negotiable quality
Boylston v Green 8 Mass 465
That a note of hand having been paid by a last indorser thereby lost its negotiable quality
Overruled in 17 Mass 515
Bennings gage v Ralphson 2 Show 280
Declaration in assumpsit & another count on a personal warranty; & held they could not be joined
The late decisions are to the contrary
2 Caines 216 and cases cited
Bowerbank v Ballman 1 D & C. 406
That delay in giving notice of the dishonor of a bill & did not discharge the party indorsing on it unless he could prove he had sustained damage & the Cashier of the holder definitely Overruled in 3 Esp 158. Such damages are to be presumed unless it be shown that the drawer had no effect in the hands of the drawee. - Per Lawrence J in U States v Barker 1 Paine Law Journal 8-
Blake v Sewell 3 Mass 556-
In this case the position was laid down universally that a note having been once paid ceased to be negotiable.
But this rule is limited to cases where subsequent negotiation of the note

would revive the liability of a party already discharged — & the case of Endorsee subsequent to the indorsey paying the note 17 Mass 615 —

Butler v Warren 11 Johns 57

That an interested witness cannot testify to any point arising at the trial of the cause, such as service of notice on Deft to produce papers &c —

Overruled in 16 Johns 193 where it was held that for this purpose and some others he is competent

Baker v Hagaves 6 T. R. 597

Overruled in 5 Cast 318 - 5 Price 60

Callaghan *v.* Aylett 2. *Campb.* 549.

If a bill of exchange be accepted payable at a certain place, in an action v. the acceptor the Plf. must prove a demand at the place where it became due.

Overruled. *Fenton v. Goundry* 13. *East.* 459. *Vid. Lyon v. Sundius* 1. *Campb.* 423. *Wild v. Rennards ib.* 425. *Nichols v. Bowes* 2. *Campb.* 498.

Camden *v.* Morton cited 18. *Ves.* 118.

Questioned and overruled in *Hare v. Grove* 3. *Anstr.* 687 *and Holtzapffel v. Baker* 18. *Ves.* 115.

Campbell *v.* Arnold 1. *Johns* 511.

That lessor cannot maintain trespass *quare clausum fregit* for an injury done to the land while in possession of tenant at will, &c.

But the contrary is settled in *Massachusetts* in *Starr v. Jackson* 11. *Mass.* 524.

Campbell *v.* Leach *Ambl.* 749.

Ld. Redesdale doubted that part of this case which attributes to *Ld. Ch. J. De Grey* the opinion that the remainder-man could not enforce the contract of the tenant for life, with power to lease, &c. *Vid.* 1. *Sch. & Lefr.* 65.

Carter *v.* De Brune *Dick.* 39.

Service of a subpœna out of Chancery on a person who transacted business for Deft. under a general power, held good.

Denied in *Smith v. Hibernian Mine Co.* 1. *Sch. & Lefr.* 238.

"Cases *temp.* Nottingham."

Said *per Ld. Hardwicke* that the book of "Reports of cases in Equity in *Ld. Nottingham's* time" was of no authority. 1. *Wils.* 162. *Vid.* 3. *Atk.* 334.

Cave *v.* Cave 2. *Vern.* 508.

Ld. Hardwicke said he had ordered the Register to be searched, and that as the case is there stated it is impossible there could be that question in the cause which the book states. 1. *Atk.* 556.

Caverly *v.* Dudley 3. *Atk.* 541.

This case is treated very lightly by *Ld. Eldon* in *Jones v. Harris* 9. *Ves.* 494. who says of it, "as to *Caverly v. Dudley*, if I am to decide on such grounds, I may decide just what I please."

Chandler *v.* Lopus *Cro. Jac.* 4. cited 2. *Esp. N. P.* 629.

The case of a *bezoar* stone, sold by one skilled, to one unskilled in, precious stones, *ubi revera* it was of inferior value:—and held that no action would lie, without a *scienter* laid and proved, or an *express* warranty, &c.

Denied in *Bradford v. Manly* 13 *Mass.* 143.

Chanel *v.* Robotham *Yelv.* 68.

If in trover, a bond is called *goods*, it is a fatal defect.
Overruled. *Dyer*, 5. *b. n. Cook v. Bossinger* 4. *Mod.* 156. *Anon* 1. *P. Wms.* 267.

Charnley *v.* Wistanley 5. *East* 270. 271. 1. *Chitty on Pleading* 243. 445.

A mere prayer of judgment, without pointing out the appropriate remedy, is sufficient; and, the facts being shewn, the Court *ex-officio.* is bound to pronounce the proper judgment.
The reverse of this rule is the principle of the law of *Canada;* where the conclusions are held to be essential to the proceedings, and must contain, *a peine de nullitie,* all that the judgment of the Court must comprehend. *Forbes v. Atkinson* 1. *Pyke* 40.

2. Ch. Cases.

"Most of these cases grossly misreported"—Said *per Ld. Loughborough,* 1. *H. Bl.* 332.

Chidley *v* Lee *Prec. in Chan.* 228.

"I must own I think that was an extreme hard case, and I believe I should have been inclined to determine it otherwise." *Per Ld. Hardwicke* in *Wood v. Bryant* 2. *Att.* 521.

Churchman *v.* Tunstall *Hardr.* 162.

Overruled in *Att'y Gen. v. Richards* 2. *Anstr.* 603. 616.

Clark *v.* Bradshaw 3. *Esp.* 155.

"A *nisi prius* opinion, on which little reliance can be placed."
Vid. Danforth v. Culver 11. *Johns.* 148. *Jackson v. Fairbank* 2. *H. Bl.* 340. *Whitcomb v. Whiting Doug.* 652.

Clare *v.* Clare *Forrester R.* 21.

Shaken in subsequent cases. *Lyon v. Mitchell* 1. *Maddock Ch. R.* 467. 486.

Clayton *v.* Andrews 4. *Burr.* 2101.

That executory contracts for sale of goods are not within the statute of frauds, *sec.* 17.
Overruled in *Rondeau v. Wyatt* 2. *H. Bl.* 63. *Vid.* also *Chater v. Beckett* 7. *D. & E.* 201. *Cook v. Tombs, Anstr.* 420. *Cooper v. Elston* 7. *D. & E.* 14.

Clerk *v.* Gilbert *Hob.* 331.

"Thou art a thief *and* hast stolen 20 loads of my furze"—held not actionable.
Denied in *Wainright v. Whitley Sty.* 115. 3. *Caines* 75 *in margine.*

Clefold *v.* Carr 1. *Brownl.* 127. 1st *point.*

Overruled in *Alleway v. Roberts* 1. *Sid.* 186. 1. *Lev.* 38. *S. C.*

Clendenning & *al.* v. Church 3. *Caines* 141.

Admits the validity of wager—policies;—which the Courts in *Massachusetts* do not. 2. *Mass.* 1.

Clerke v. Martin 2. *Ld. Raym.* 757. 1. *Salk.* 129.

Overruled in *Grant v. Vaughan* 3. *Burr.* 1516.

Cocking v. Fraser *Park*, 114.

That if the articles mentioned in the memorandum at the foot of the policy *specifically remain* after the voyage, though damaged and worthless, the insurer is not liable.
Ld. Kenyon called this an *obiter dictum*, and said he could not subscribe to it. *Vid. Burnett & Kensington* 7. *D. & E.* 210. And *Ld. Alvanley* said he was at liberty to consider the case of *Cocking v. Fraser* as less strong than it appears to be. *Dyson v. Rowcroft* 3. *B. & P.* 474.
But the U. S. Courts have adopted the principle of this case. *Vid. Morceau v. U. S. Ins Comp.* 1. *Wheat.* 219. 1. *Caines* 196. 3. *Caines* 108.

Cockerill v. Kynaston 4. *D. & E.* 277.

That a count on a promise to the Ex'r. as such, may be joined with a count on a promise to the testator.
Overruled in *Bolland v. Spencer* 7. *D. & E.* 358. and in *Henshall v. Roberts* 5. *East* 150.

Co. Litt. 45. b.

Where it is said that "term" signifies the *estate & interest* that passes, and never denotes the number of years, or *time*, &c.
Overruled in *Wright v. Cartwright*, 1. *Burr* 282.

Comberbach's Reports.

Carthew & Comberbach are said by *Ld. Thurlow* to be equally bad authority. 1. *Bro. Ch. C.* 97.
But *Ld. Kenyon* says that *Carthew* is, in general, a good reporter. 2. *D. & E.* 776.

Cole v. Davies 1. *Ld. Raym.* 724.

The *first* resolution, that no action would lie against the Sheriff, who, after bankruptcy, seizes and sells the goods under a *fieri facias* to him directed—is denied by *Ld. Mansfield* in *Cooper v. Chitty & al.* 1. *Burr* 36.

Comber v. Hill 3. *Str.* 969. *Ca. Temp. Hardw.* 22.

That where remainders were limited to two and the heirs of their *respective* bodies, cross remainders were not to be implied.
"As to the word 'respectively,' the cases which have founded themselves on the distinction of that expression must now be considered as having been overruled." *Per Lawrence J.* in *Doe ex. dem. Gorges v. Webb* 1. *Taunt.* 239. *Vid.* also *Watson v. Fidon* 2. *East* 36. *Wright v. Holford Cowp.* 31.

Conway *v.* Gray 10. *East.* 543.

Overruled in *Flindt v. Scott* 5. *Taunt.* 674, and *Baret v. Meyer* 5. *Taunt.* 824.

Cooke *v.* Booth *Cowp.* 819.

Overruled. *Iggulden v. May* 2. *N. Rep.* 452. 7. *East.* 237. *S. C.* 9. *Ves. Jr.* 325.

Cookson *v.* Ellison 2. *Bro. Ch. Rep.* 252.

Denied by *Ld. Kenyon* in *Newman v. Godfrey* 2. *Bro. Ch.* 332 and by *Ld. Loughborough* in *Jerrard v. Smart, and Shaw v. Ching* 11. *Ves.* 283. 296. 303. and *Methodist Episcopal Church v. Jaques.* 1. *John. Ch. Rep.* 65.

Cooper *v.* Chitty 1. *Burr.* 36.

"With respect to what is supposed to have been said by *Ld. Mansfield* in *Cooper v. Chitty*, of *Comberbach's* having mistaken *Ld. Holt's* opinion in *Lechmere v. Thorowgood* it is as probable that the report of that observation is mis-stated." *Per Ld. Kenyon* 4. *D. & E.* 412.

Corbett *v.* Poelnitz 1. *D. & E.* 5.

That a feme covert, living apart from her husband and having a separate maintenance, may sue and be sued as a feme sole.

Overruled in *Marshall v. Rutton* 8. *D. & E.* 545.

Cornish *v.* Cawsey *Alleyn*, 77. *Sty.* 118.

Overruled in *Pugh v. D. of Leeds. Cowp.* 719.

Cornwallis *v.* Spurling *Cro. Jac.* 57.

Overruled. *Fossett v. Franklin T. Raym.* 225. *Elliot v. Starr* 1. *Freem.* 299.

Corporation of Barnstable *v.* Lathey 3. *D. & E.* 303.

Suit by the corporation for toll, and the Deft. obtained a rule for inspection of such minuments, &c. of the corporation as related to the matter.

Overruled in *The Mayor of Southampton v. Graves* 8. *D. & E.* 590.

Cordell *v.* Noden 2. *Vern.* 148.

Never followed since; and now overruled. *Clennell v. Lewthwaite* 2. *Ves. Jr.* 465. 471. *Smith v. Fitzgerald* 3. *Ves. & Beame* 2.

Cotton *v.* Daintry 1. *Ventr.* 30.

That a writ of error is a *supersedeas* from the sealing of it.

Denied in *Meriton v. Stevens, Willes* 275.

Coveney's case *Dyer* 209.

——"it is reasonable to suspect that case not to be law, when the instance is impracticable whichit is brought to prove." *Per Ld. Holt* in *Philips v. Bury* cited 2 *D. & E.* 346.

Counden v. Clerke *Hob.* 31, 2d point.

Overruled. *Godbolt v. Freestone* 3 *Lev.* 206. *Abbot v. Burton* 2. *Salk.* 591. *Harris v. Bp. of Lincoln* 2 *P. Wms.* 139.

Coulter's case *Cro. Eliz.* 630. 5. *Rep.* 30. *S. C.*

In 2. *H. Bl.* 23. it is said that judgment was never rendered in this case, and that *Croke* is mistaken.

Cowans v. Abrahams 1. *Esp.* 50.

That in trover for a bill of exchange, Deft. must have notice to produce it, before the Plf. could go into proof of its being in Deft's. possession.

The authority of this case is considerably shaken by *Bucher v. Jarratt* 3. *Bos. & Pul.* 143. *Vid.* also *Aickle's case* 1. *Leach C. L.* 330. and *Jolley v. Taylor* 1. *Campb.* 143.

Cressey v. Kell 1. *Wils.* 120.

Overruled in *Lewis v. Pottle* 4. *D. & E.* 570.

Crofton's case 1. *Mod.* 34.

That if a statute create a *new* offence, to be prosecuted "by bill, plaint or information," an indictment will lie, except there be negative words—as, "and not otherwise."

——"has been denied many times." Said *per Ld. Mansfield* in *Rex v. Wright* 1. *Burr.* 543.

Crop v. Norton 2. *Atk.* 74. 9. *Mod.* 233.

Corrected, as to its general application, in *Wray v. Steele* 2. *Ves. & Beame*, 388.

Crooke v. Brooking 2. *Vern.* 106.

The concluding observation of the reporter, denied in *Jackson v. Staats* 11 *Johns.* 350.

Cumber v. Wayne 1. *Str.* 426.

That the giving of a note for £5. cannot be pleaded as a satisfaction for £15.——"has since been repeatedly denied to be law." Said *arguendo* 2. *D. & E.* 26. and agreed by the Court *ib.* 28. *Sed. quære and vid.* 5. *East.* 230. *Fitch v. Sutton, and* 1. *Selw. N. P.* 136. *note* (68.

Cutting v. Williams 1. *Salk.* 24.

That a judgment cannot be reversed in part and affirmed in part.

Overruled. *Kent v. Kent* 2. *Str.* 971. *Vid.* also *Bellew v. Aylmer* 1. *Str.* 188. *Henriquez v. Dutch W. I. Company* 2. *Str.* 807. *Frederick v. Lookup* 4. *Burr.* 2018. *Smith v. Jansen* 8. *Johns.* 111. *Nelson v. Andrews* 2. *Mass.* 164. *Waite v. Garland* 7. *Mass.* 453. *Cummings v. Prudon* 11. *Mass.* 206.

Collingwood v Pane 1 Sev. 59
That a devise to an alien, & also to the heir of an alien is void - Gilbert on Devises page 15 - same point
Overruled in 2 Vesey 360. 7 Cranch 603
12 Mass 143 -

Coolidge v Inglee 13 Mass 26
That an enemies license is a good consideration for a note
Overruled in effect in 3 Wheaton 204
Chambey v Robinson 15th. 691
That a new trial may be granted for excessive damages, but not a third trial
Denied Per Platt C.J. 2 Wilson 244

Crookford v Winter 1 Camp. 129
What was said by Ld Ellenborough that the principal is universally liable civiliter for all frauds done by his agents - is limited to cases where the act is done by the agent in the course of his employment -
Vide 17 Mass. 510.

Clayton v Andrew 4 Burr [illegible]
In 6 Barnes and 613 this case is said not to be correct Case -

Dabney v. Gregg 5. *Viner's Abr.* 40. *pl.* 55.

There are two mistakes in *Viner's* report of this case; viz. that the question arose on a covenant *of the wife before marriage*;—and that Deft. was seized of other lands *in right of his wife*. *Vid. Willes Rep.* 150. *S. C.*

Da Costa v. Scanderet 2. *P. Wms.* 170.

That where a policy is void for fraud in the insured, he may still have a return of the premium.

Overruled in *Chapman v. Fraser*, *Park* 218.

Da Costa v. Pym *Peake's Ev. ap.* lxxxii.

Ld. Kenyon refused to admit proof of the bond in suit, by comparing the signature with other signatures proved to be Deft's.

But in *Massachusetts* such evidence is admissible. *Homer v. Wallis* 11. *Mass.* 312. So in *Connecticut*. *State v. Brunson* 1. *Root* 307.

Daniel v. Cartony 1. *Esp.* 274.

Overruled in *Lowes v. Mazaredo* 1. *Starkie* 385. *Chapman v. Black* 2. *Barn. & Ald.* 588.

Daubigny v. Davillon 2. *Anstr.* 462.

Lately overruled in the exchequer; but this last case questioned by *Ld. Eldon*. *Aldbrecht v. Sussman* 2. *Ves. & Beame* 323.

Day v. Arundel *Hardr.* 510.

Overruled. *Milland's case* 2. *Freem.* 43. *Wagstaff v. Read* 2. *Ch. Ca.* 156.

Dean v. Dicker 2 *Str.* 1250.

Wager policy held valid. Not law in *Massachusetts*. *Amory v. Gilman* 2. *Mass.* 1.

Dean v. Allalley 3. *Esp.* 11.

Erections made by the tenant for mere *agricultural* purposes were allowed to be taken away by him at the end of his term; such erections being put upon the footing of erections for the benefit of *trade*.

But this doctrine is denied, and this case spoken slightly of by *Lord Ellenborough* in *Elwes v. Maw* 3. *East.* 54.

De Berdt v. Atkinson 2. *H. Bl.* 336.

That the rule requiring demand on the maker, and notice to the indorser, is applicable only to fair transactions, where the bill or note has been given for value, in the ordinary course of trade.

Bayley, on bills, p. 136, says "the Court appear to have proceeded on a misapplication of the rule which obtains as to accommodation acceptances," &c. which *Chambre J.* calls "a very sensible note." *Leach v. Hewitt* 4. *Taunt.* 731. *Vid. Warder v. Tucker* 7. *Mass.* 449. *Bond v. Farnham* 5. *Mass.* 170.

Deane's case *Hutt.* 125.

Overruled, *March* 11.

Del Col v. Arnold 3. *Dal.* 333.

Overruled, in effect, in *L'Invincible* 1. *Wheat.* 238.

Denison v. Modigliani 5. *D. & E.* 580.

That the taking of letters of marque by a merchant vessel avoids the policy, though no use be made of them.

The authority of this case is shaken in *Moss v. Byrom* 6. *D. & E.* 379. In *Massachusetts* it is denied. *Wiggin v. Amory* 13. *Mass.* 118.

Denn v. Fernside 1. *Wils.* 176.

1st resolution, that the grant of a freehold to commence *in futuro* was void.

"This old principle of law——has no good ground to stand upon, at this day." *Per Pratt C. J.* in *Freeman v. West* 2. *Wils.* 165.

Denne v. Dupuis 11. *East* 134.

Denied in *Horwood v. Underhill* 4. *Taunt.* 346.

De Souza v. Ewer, *Park* 361.

That the sentences of foreign Admiralty Courts were conclusive, though founded on the want of a document not required by treaty, nor by the law of nations.

Ld. Kenyon afterwards said he was satisfied he was mistaken in that decision, and consequently that it could no longer be considered as any authority. 8. *D. & E.* 444. *note.*

Dickens' Reports.

"*Mr. Dickens* was a very attentive and diligent *register;* but his notes, being rather loose, were not to be considered as of very high authority." *Per Ld. Redesdale* 1. *Sch. & Lefr.* 240. *Vid.* also *Sugden's law of Vendors* 139.

Dick v. Barrell 2. *Stra.* 1248.

Plf. insured on any ship he should come in, from *Virginia* to *London*, interest or no interest. The ship he sails in springs a leak, he removes to another, and arrives safely, but the first ship is taken. The insurer was held liable.

This case is treated by *Marshall* as entitled to no credit; [p. 376] and is shaken in *Plantamour v. Staples* 1. *D. & E.* 611. *n.*

Dighton v. Greenville 2. *Ventr.* 321.

Reversing, in *Cam. Scac.* the judgment in *B. R.* as reported in *Skin.* 26. But this judgment in *Cam. Scac.* was reversed in *Dom. Proc. Cruise on fines* 222.

Doe v. Watton *Cowp.* 189.

That "from the day of the date" was exclusive. This case was afterwards overruled by *Ld. Mansfield*, who decided it, in *Pugh v. D. of Leeds Cowp.* 714.

Doe ex dem. Blake *v.* Luxton 6. *D. & E.* 292.

That tenant *pur auter vie* with limitations over may defeat the limitations by will. Doubted *per Ld. Redesdale* in *Campbell v. Sandys*, 1. *Sch. & Lefr.* 294.

Doddington *v.* Hallet 1. *Vez.* 497.

Overruled by *Ld. Eldon* in *Ex parte Young*. 2. *Ves. & Beams* 242. *Belt's Supp. to Vesey's Rep.* 205.

Dormer *v.* Thurland 2. *P. Wms.* 506.

Power given to charge the premises with £2000. by *will, or any writing in nature of a will, sealed and attested by three or more witnesses.* The premises were charged by will signed and attested by three witnesses, but not *sealed.* The Judges of *B. R.* determined that this was not a good execution of the power. But *Ld. King* thought it was;—"and I own," says *Ld. Mansfield*, "I should incline to his opinion." *Earl of Darlington v. Pulteney Coop.* 268.

Dove *v.* Smith 6. *Mod.* 153. *sub. fin.*

"Opinion of the reporter, not of *Ld. Holt.*" *Per Lawrence J.* 6. *D. & E.* 406.

Draper *v.* Glassop 1. *Ld. Raym.* 153.

That upon *nil debet* pleaded, the statute of limitations may be given in evidence.

Has since been overruled. *Vid.* 1. *Cranch* 465. app. *Pearsall v. Dwight* 2. *Mass.* 84.

Drake *v.* Royman *Sav.* 133.

That an executor cannot maintain trover, if the conversion was in the lifetime of the testator.

Overruled. *Crosier v. Ogleby* 1. *Str.* 60.

Drury *v.* Dennis *Yelv.* 106. 1. *Brownl.* 209.

Overruled. *Anon.* 1. *Vent.* 93. 1. *Chitty on Pleading* 81.

Dyer 253. *b. pl.* 102.

Lease to W. C. *pro termino* 12. annorum, *si tam diu vixerit; et si obierit infra predictum terminum, tunc, &c.* The remainders were holden void, because the term is determinable on the life of W. C.

This doctrine is denied in *Wright v. Cartwright* 1. *Burr.* 282, where it is settled that "*term*" means the *estate*, or *interest* created, as well as the limitation of time.

Dyer *v.* East 1. *Vent.* 146.

That a smiter in a church yard does not stand *ipso facto* excommunicated, until conviction at law, transmitted to the ordinary.

"This is the only case to be met with to this purpose; and it must be a mistake, either in the state of the case or in the opinion." *Per Dennison J.* 1. *Burr.* 244.

Davison v March 4 B. & P. 157
Overruled in 3 Barn & Ald 496
Dayton case Roy 171 =
That an agreement at the time of making the obligation that the interest shall be paid before the expiration of the year is usurious Per Popham J.
This is not cau- bid Ord on Usury 53 and the cases cited
Deeks v Strutt 5 T R 690
Questioned in 10 Johns 30- 3 Cowen 133-144
Dean v Peel 5 East 45
That a father cannot have an action for debauching his daughter unless she resided in his family
Denied in Martin v Paine 9 Johns 387 = and in 4 Greenleaf Emery v Gower —
Dickinson v Prentice 4 Cow 34
That a drawer of a bill of exchange is an admissible witness to the acceptor to prove his handwriting
Contradicted in 2 Greenleaf 199.
& Case cited under Bird v Pittis Law Supra

Earl *v.* **Rowcroft** 8. *East* 126.

That part of this case which contains the opinion that the motives of the shipmaster are of no account in a question of barratry is inconsistent with *Crousillat v. Ball* 4. *Dall.* 296. *Marcadier v. Chesapeake Ins. Co.* 8. *Cranch* 39. 49. *Kendrick v. Delafield* 2. *Caines* 72: and see note to 7. *D. & E.* 508. that barratry must arise *ex maleficio.*

Eaton *v.* **Jaques** 2. *Doug.* 455.

That if a term be assigned by way of mortgage, with a clause of redemption, the lessor cannot sue the mortgagee as assignee of all the estate, right, &c. of the mortgagor, even after forfeiture of the mortgage, unless the mortgagee has taken actual possession.

Said to have been denied to be law. *Powel on mort.* 241.

Eckhardt *v.* **Wilson** 8. *D. & E.* 140.

That the assignees of a bankrupt should be joined with his solvent partners.

Contra 1. *Esp.* 140. 170. *Webb v. Fox* 7. *D. & E.* 391. *Fowler v. Down* 1. *Bos. & Pul.* 44. *Bird v. Pierpont* 1. *Johns.* 126. 5. *East* 230.

Eggleston *v.* **Lewin** 3. *Salk.* 175. 1. *Salk.* 23.

That *indebitatus assumpsit* will lie for money won at play.

Contradicted by *Smith v. Bromley Doug.* 696. *n. Howson v. Mancock* 8. *D. & E.* 535. *Vandyck v. Hewit* 1. *East* 98. *Farrar v. Barton* 5. *Mass.* 395. *Worcester v. Eaton* 11. *Mass.* 368.

Ellis *v.* **Ruddle** 2. *Lev.* 151.

Ellis *v.* **Audle** 3. *Keb.* 552. *S. C.*

Ellis *v.* **Nulso** 3. *Keb.* 659. 678. *S. C.*

This case is examined and denied by *Willes C. J.* in *Huggins v. Bainbridge, Willes* 245.

Ellis *v.* **Atkinson** 3. *Bro. Ch. Ca.* 563.

Overruled by *Sir Pepper Arden*, master of the Rolls, in *Socket v. Wray* 4. *Bro. Ch. Ca.* 483. but it may be doubted if it is not again established, and *Socket v. Wray* overruled by *Heatley v. Thomas* 15. *Ves.* 596. and see *Claney on the Rights of married women* 88. *to* 100.

Erskine *v.* **Townsend** 2. *Mass.* 496.

What is said by *Parsons C. J.* that if the mortgagee declare generally, and the mortgagor shall plead in bar that the mortgagee is seized as tenant in mortgage, the condition of which is broken, the action shall be barred;—is overruled in *Green v. Kemp* 13. *Mass.* 515.

Evelyn *v.* **Templar** 2. *Bro. Ch. C.* 148.

The printed note is very imperfect. *Per Ld. Eldon* in *Pulvertoft v. Pulvertoft* 18. *Ves.* 84.

Everett v Gray 1 Mass 101
In an action to recover the price of certain gun locks it was ruled that the Dept could not be admitted to show fraud & deceit in the workmanship but must resort to his special action against the Pff for the fraud.
The Case of this case has since been doubted & vid 14 Mass 285.

Edwards v Child 2 Vern 727
Overruled so far as it restrains agreements by which wages are made to depend on the carrying of freight agreeable to the contract of affreightment - but not so far the Said Per Winchester J in 1 Peters Adm. 193 note

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Emerton v Andrews 4 Mass
Denied in Marquand v Webb in 16 Johns - in Exly v Hunt 2 T.R 464.

Faikney *v.* Reynous & al. 4. *Burr.* 2069.

Bond for repayment of money lent for a purpose prohibited by act of parliament; and held good—but a distinction taken between *malum prohibitum* and *malum in se*, as applicable to such bonds.

Lawrence J. said this distinction had been very often doubted. *Webb v. Brooke* 3. *Taunt.* 10. It is questioned also by *Ld. Ch. J. Eyre* in *Mitchell v. Cockburne* 2. *H. Bl.* 379, by *Ld. Elden* in *Aubert v. Maire* 2. *Bos. & Pul.* 372. and by *Ld. Loughborough* in *Ex parte Mather* 3. *Vez.* 373. See also, *Steers v. Lashley* 6. *D. & E.* 61. *Clayton v. Dilly* 4. *Taunt.* 165. *Lacaussade v. White* 7. *D. & E.* 535. *Howson v. Hancock* 8. *D. & E.* 575. *Vandyck & al. v. Hewitt* 1. *East* 98. *Worcester v. Eaton* 11. *Mass.* 368. *Farrar v. Barton* 5. *Mass.* 395. *Aubert v. Walsh* 3. *Taunt.* 277.

Farwell *v.* Heelis *Ambler* 724. 2. *Dick.* 485. *S. C.*

Questioned in *Blackburn v. Gregson* 1. *Bro. Ch. Ca.* 420. and overruled in *Mackreath v. Symmons* 15. *Ves.* 329.

Farr *v.* Newman 4. *D. & E.* 621.

That in an action against an Executor for his own debt, the goods of the testator cannot be taken in execution.

The contrary is the law of *Massachusetts*. *Vid. Coburn v. Ansart* 3. *Mass* 319. *Vid.* also *Scott v. Tyler* 2. *Dick.* 274. *Hill v. Simpson* 7. *Ves. jr.* 152. *Taylor v. Hawkins* 8. *Ves. jr.* 209. *Quick v. Staines* 1. *Bos. & Pul.* 293.

Fenton *v.* Goundry 13. *East* 459.

Overruled in *Callaghan v. Aylett* 3. *Taunt.* 397. and *Gammon v. Schmoll* 5. *Taunt.* 344.

Finch *v.* Wilson 1. *Wils.* 167.

Doubted 2. *Saund.* 63. *note.* *Ballantine on Stat. Limitations* 233.

Fitzgibbon's Reports.

Ld. Hardwicke called this "a book of no authority." 3. *Atk.* 610. but allowed the case of *Holt v. Ward* to be well reported. See also *Andrews*, 75.

Forbes *v.* Fanshaw *Trin.* 24. *G.* 3. *C. B.*

Denied in *Latless v. Holmes* 4. *D. & E.* 660.

Foot *v.* Tracy 1. *Johns.* 46.

Case for a libel, and not guilty pleaded. On the Deft's. motion to give in evidence the general character of the Plf. in mitigation of damages, the Court were equally divided, and Deft. took nothing by his motion.

But such evidence is admissible in *Massachusetts*. *Larned v. Buffinton* 3. *Mass.* 546. *Vid.* also *King v. Waring* 5. *Esp.* 14.

Fowler *v.* Padget 7. *D. & E.* 509.

That merely departing the realm, without actual *intent* to delay creditors, is not an act of bankruptcy.

Overruled in *Robertson v. Liddel* 9. *East*, 487.

Freeman's Reports.

Said *arguendo* to be a book of no authority. Upon which *Lord Mansfield* observed, that *some* of the cases in *Freeman*, were very well reported. *Coup.* 15—" better than they are supposed." 3. *Ves. jr.* 530.

Freeman v. Barnard 1. *Ld. Raym.* 247. 248. *Salk.* 69. 12. *Mod.* 130.

The distinction there taken no longer exists. *Vid. Armstrong v. Masten* 11. *Johns.* 190.

Freeman v. West 2. *Wils.* 165.

Lease *habendum a die datus*;—objected that the day of date being *exclusive*, this created a freehold to commence *in futuro*, and therefore void. Agreed by *Pratt C. J.* that the day of date is *exclusive*.

But see *Pugh v. D. of Leeds*, *Coup.* 714. where it is settled that "from" is inclusive or exclusive, according to the intent of parties.

Note. *Pratt C. J.* said "this old principle of law, that a freehold cannot pass to commence *in futuro* has no good reason or ground to stand upon, at this day."

See also *Reeve on Domestic Relations*, p. 117. acc.

Feise v Randall 6 T. R. 146
On a composition between an insolvent & his Creditors, he agreed to give one creditor collateral security for his proportion as a private inducement to sign; & this was held good
Shaken & Leicester v Rose 4 East 381-384

Fabiliny v Cock 3 Burr 1771.
New trial granted, on discovery that witnesses were perjured at a former trial
The contrary was holden in N. York in 5 Johns 248- where Kent C.J. said. "The case of Fabiliny v Cock was an extreme case not to be ~~re~~ rested by ordinary rules" See also

3 Johnson 255 — 5 Mass 261 —
Sed quaere and see 1 Greenleaf 322 —

Fairbee v Hoffnagle 11 Johns 50 =
In an action for the amount of the note given for the purchase money of a piece of land, the title to which had wholly failed it was holden that the consideration of the note had also failed, though the land was conveyed with warranty.
Questioned in Lapsley Jewell 1 Greenleaf

Thy v Hill 7 Taunt 397
The Court in this case held that it was a question for the jury whether a bill payable at sight was presented in reasonable time
But this has elsewhere resolved to be a question for the court
See Attwood v Clark 2 Greenleaf —

Foot et al v Colvin 3 Johns 216
See Gordon v Hubbard 15 Mass 218

Lacker *v.* Harcourt 1. *Show.* 148. *Carth.* 126. *Holt*, 76.

Overruled. *Wigley v. Morgan, Ca. temp. Hardw.* 285.

Lacaussade *v.* White 7. *D. & E.* 535.

That whenever money has been paid upon an illegal consideration it may be recovered back again.

Denied *per Parker C. J.* in *Worcester v. Eaton* 11. *Mass.* 368. and is contradicted by *Howson v. Hancock* 8. *D. & E.* 575. and *Aubert v. Walsh* 3. *Taunt.* 277.

Lambert *v.* Oakes 1. *Ld. Raym.* 433. 12. *Mod.* 244.

Lambert *v.* Pack 1. *Salk.* 127. *pl.* 9.

That in an action on a bill of exchange, it is necessary to prove a demand on the drawer.

This doctrine is exploded. *Vid. Bromley v. Frazier* 1. *Str.* 441. *Heylyn v. Adamson* 2. *Burr.* 669. 678.

Lampley *v.* Thomas 1. *Wils.* 193.

Overruled. *Perry v. Jones* 2. *Doug.* 213.

Lampen *v.* Hatch 2. *Str.* 934.

That a judgment cannot be reversed in part and affirmed in part.

Overruled in *Kent v. Kent* 2. *Str.* 971. *Vid.* also *Waite v. Garland* 7. *Mass.* 443. and *Cutting v. Williams, ante.*

Lawson *v.* Lawson 1. *P. Wms.* 441.

—as to *donatio mortis causa. Vid. Tate v. Hilbert* 2 *Ves. Jr.* 120. where this is contradicted by reference to the Register's book.

Lawley *v.* Hooper 3. *Atk.* 278.

Not accurately stated in *Atkyns. Vid. McGhee v. Morgan* 2. *Sch. and Lef.* 395. *note.*

Law *v.* Ibbotson 5. *Burr.* 2722.

Overruled in *Williamson v Allot Cowp.* 429. 5. *Burr.* 2725. *S. C.* and *Wynn v. Smithies* 6. *Taunt.* 198.

Le Bret *v.* Papillon 4. *East* 502. 509.

The like point as in *Charnley v. Winstanley, ante.*

Lechmere *v.* Thorowgood *Comb.* 123. 3. *Mod.* 236.

——" is best reported in 1. *Show.* 12. and this report—is the only clear state of it in any of the reports." 1. *Burr.* 35.

Leame *v.* Bray 3. *East* 593.

That if the Deft. be the *immediate* cause of the injury, whether wilfully or not, trespass, and not case, is the proper remedy.

The correctness of this decision has been doubted in two subsequent cases in *C. B. Rogers v. Imbleton* 2. *New Rep.* 117, and *Haggett v. Montgomery ib.* 446.

Gilchrist *v.* Brown 4. *D. & E.* 766.

Admits the liability of *feme covert*, living on a separate maintenance to be sued as *feme sole*.
Overruled in *Marshall v. Rutton* 8. *D. & E.* 545.

Gilbert on Devises 15.

That a devise to an alien, and also to the heir of an alien, is void.
Denied in *Fox v. Southack* 12. *Mass.* 146.

Gilpin's case, *Cro. Car.* 161.

Overruled. *Doe v. Timins* 1. *Barn. & Ald.* 530.

Gist *v.* Mason 1. *D. & E.* 84.

The opinion of *Ld. Mansfield* which may be collected from this case, that insurance of enemies' property is legal, is controverted by *Buller J.* in *Bell v. Gilson* 1. *Bos. & Pul.* 354.

Glover *v.* Kendal 1. *Ld. Ray.* 393.

That an Ex'or. cannot maintain an action in *his own* name *vs.* a Sheriff for the escape of a prisoner who was in execution on a judgment obtained by him as executor.
Overruled in *Bonafous v. Walker* 2. *D. & E.* 126.

Godlington *v.* Lee *T. Raym.* 14.

Overruled. *Milner v. Petit* 1. *Ld. Raym.* 720. *Gilb. on debt* 396. 12. *Mass.* 1.

Goodright *v.* Harwood 3. *Wils.* 497. *C. B.*

Reversed on error in *B. R. Cowp.* 87. and the judgment of reversal affirmed in *Dom. Proc.* 7. *Bro. Parl. Ca.* 344.

Goodright *v.* Straphan *Cowp.* 201.

Questioned in *Lee v. Muggeridge* 5. *Taunt.* 36.

Goodright *v.* Moss. *Cowp.* 591.

"*Lord Thurlow* was most studious to contradict this case, and he learned his doctrine in the same school, [i. e. the western circuit,] so had the *Chief Justice*, [*Mansfield*,] and *Mr. Justice Heath*." *Per Ld Eldon*, in the case of the *Berkley Peerage* 4. *Camp.* 401. 420.

Goodtitle *v.* Bailey *Cowp.* 597.

In this case, and that of *Yea v. Bucknell*, *Cowp.* 473, *Ld Mansfield*, [followed by *Buller J.* in 2. *D. & E.* 581.] considered *contracts* for leases, to be, between the parties, operative *at law*, as leases.
But this doctrine is doubted by *Ld. Redesdale* 1. *Sch. & Lefr.* 66.

Goodwin *v.* Blackman 3. *Lev.* 334.

Ejectment of the tenth part of a messuage, described as lying in two parishes, and proved to lie in one only: and held that the declaration was not maintained, being for precisely the tenth part of an entire thing.

Called "a strange case"—"contrary to all experience." *Per Denison J.* 1. *Burr.* 330.

Goodtitle *v.* North *Doug.* 584.

That bankruptcy is no plea to an action of *trespass* for mesne profits, because the damages are so uncertain.

Denied in *Hatten v. Speyer* 1. *Johns.* 42.

Goodright *v.* Richardson 3. *D. & E.* 462.

Lease for "three, six, or nine years" held to be a lease for nine years, determinable at the end of the first three or six years by *either* party, on giving reasonable notice to the other.

But it has since been adjudged that it is not determinable by *either* party, but at the option of *lessee only.*

Dann v. Spurrier 3. *Bos. & Pul.* 399. 442. 7. *Ves. Jr.* 231. *Doe v. Dixon* 9. *East* 15.

Goodier *v.* Platt *Cro. Car.* 471.

——was decided on the principle that a judgment cannot be reversed in *part only.*

Overruled. *Vid. Cutting v. Williams, ante.*

Gordon & al. *v.* Secretan 8. *East* 548.

Restricted in its application—*Pearce v. Hooper* 3. *Taunt.* 62. *Betts v. Badger* 12. *Johns.* 223.

Green *v.* Edwards *Cro. El.* 217.

Lease for years, if lessee live so long; remainder to another for the residue of the *term:* and remainder held void.

But this and the like cases are overruled in *Wright ex dem. Plowden v. Cartwright* 1. *Burr.* 282.

Greeves *v.* Rolls 2. *Salk.* 456.

This case is wrong in *Salkeld.* Better reported in 12. *Mod.* 651. and 1. *Ld. Raym.* 716. *Vid.* 1. *Burr.* 359.

Greeves *v.* Weighman 2. *Rol. Abr.* 919. *D.* 2.

That if a man make two wills, and the executor under the first will prove it and receive a debt, and afterwards the second will be found and proved; the last executor may recover the debt of the debtor, whose remedy is on the first executor.

Denied *per Buller J.* in *Allen v. Dundas* 3. *D. & E.* 125.

Gregory *v.* Christie *B. R. Trin.* 24. *G.* 3. *Park* 67.

Ld. Mansfield's construction of the permission, in a policy "to touch and stay," is denied by *Sir J. Mansfield C. J.* in *Urquhart v. Barnard* 1. *Taunt.* 456.

Griffiths *v.* Williams 1. *D. & E.* 710.

Money paid into Court: but Plf. proceeded to trial, and had a verdict for the exact sum paid in. The Court directed costs for the Plf.

Hale's Hist. Plac. Cor. 556.

Where it is said that if A. hires a chamber in the house of B. &c. it burglary to break it open; and the indictment shall make it *domum mansionalem* of B.

This *dictum* is considered and overruled in *Lee v. Gansel Cowp.* 1.

Hall *v.* Lawrence 4. *D. & E.* 589.

That the award of an umpire shall not be set aside because he received the evidence from the arbitrators without examining the witnesses, unless he were requested to examine them before making his award.

Denied in *Falconer v. Montgomery* 4. *Dall.* 232. and in *Passmore v. Petit* 2. *Dall.* 271. *Kyd on awards* 104. *note.*

Hartley & al. *v.* Atkinson 2. *Barnes* 255.

That where a nonsuit is regular, the parties are out of Court, and it *cannot* be set aside.

Overruled in *Sadler v. Evans* 4. *Burr.* 1984.

Harman *v.* Van Hatton 2. *Vern.* 717.

Admits the legality of a wager policy. *Vid. Amory v. Gilman* 2. *Mass.* 1. *contra.*

Harris *v.* Benson 2. *Stra.* 919.

Overruled in *Windle v. Andrews* 2. *Barn. & Ald.* 696.

Hart *v.* King 12. *Mod.* 310. *Holt,* 118.

Shaken in *Ex parte Greenway* 6. *Ves. jr.* 812. *Pierson v. Hutchinson* 2. *Campb.* 211. *Dangerfield v. Wilby* 4. *Esp.* 159.

Harris *v.* Evans 1. *Wils.* 262.

Lease for one whole year, and so for 2. or 3 years, or any such further term of years as the parties should think fit and agree: adjudged to be a lease for *two* years.

But *Ambler*, who was of counsel in the cause, says it was holden to be a lease for *one* year only, without a subsequent agreement. *Ambl.* 329.

Hayman *v.* Gerrard 1. *Saund.* 102. 1. *Sid.* 340.

Overruled. *Meredith v. Allen Carth.* 116. 1. *Show.* 148. 1. *Salk.* 138. *Holt.* 544.

Hawes *v.* Smith 1. *Vent.* 268. 2. *Lev.* 122.

Overruled in *Secar v. Atkinson* 1. *H. Bl.* 104.

Hayes *v.* Warren 2. *Stra.* 933.

That *assumpsit* will not lie for a past consideration, unless it was at the request of the party.

Denied *per Wilmot J.* in *Pillans & al. v. Van Mierop & al.* 3. *Burr.* 1671.

Heard *v.* Wadham 1. *East*, 627.

A *dictum* of *Ld. Kenyon*, interrupting *Abbot.* Not law. *Vide ante Growsock v. Smith*, and authorities there.

Hearn *v.* Allen *Cro. Car.* 57. *Hut.* 85.

Holt C. J. "was of opinion that the authority of this case was not great." *Nottingham v. Jennings* 1. *Com. Rep.* 82.
So thought *Willes C. J.* in *Goodridge v. Goodridge. Willes.* 370.

Heathcote *v.* Paigon 2. *Bro. Ch. Ca.* 167.

Disapproved of in *Mc Ghee v. Morgan* 2. *Sch. & Lefr.* 395. *note.*

Henbest *v.* Brown *Peake's N. P. Ca.* 54.

Ld. Kenyon's opinion, that the statutes of bankruptcy extended to *all debts*, as well as *written securities*, payable at a future date, is controverted by *Ld. Ellenborough*, in *Parslow v. Dearlove* 4. *East* 438.

Heppel *v.* King 7. *D. & E.* 372.

Lawrence J. observed, that there was an inaccuracy in the wording of this report, in what he is made to say of the *recognizance* of the bail below. Bail below do not enter into recognizance, but give *bond* to the sheriff. 3. *East*, 606. *note.*

Herlakenden's case 4. *Rep.* 62.

Trespass qu. cl. and plea as to *part* only, to which the Plf. demurred; and it was holden to be a discontinuance.
"This is certainly not law." *Per Willes C. J.* in *Bullythorpe v. Turner. Willes*, 480.

Hiscox *v.* Barret *Park, Ins.* 6. *ed.* 542. *n.*

Overruled in *Bell v. Ansley* 16. *East*, 141. and *Cohen v. Hannam* 5. *Taunt.* 101.

Hitchcock *v.* Aicken 1. *Caines* 460.

That a judgment in a sister state is only *prima facie* evidence of a debt.
The contrary is law in *Massachusetts*, where nothing is examinable but the jurisdiction of the Court rendering the judgmeut. *Bissel v. Briggs* 9. *Mass.* 462.

Hixt *v.* Goates 2. *Rol. Abr.* 703.

Where in covenant on a deed of agreement with a sum liquidated as damages, the jury gave less than the sum, and held good.
But of this case *Ld. Mansfield* said "it is impossible to support it." *Lowe v. Peers* 4. *Burr.* 2229. It is clearly reported in *Cro. Jac.* 390.

Holt's Reports.

Said *per Lee C. J.* to be "a book of no authority." 1. *Wils.* 15.

Hodges *v.* Steward *Comb.* 104. 1. *Salk.* 125. 12. *Mod.* 36 *Holt* 115. Horton *v.* Coggs 3. *Lev.* 299.

Overruled in *Grant v. Vaughan* 3. *Burr.* 1516.

Holward *v.* Andre 1. *Bos. & Pul.* 32.

That where bail are opposed and rejected, and Deft. surrendered the next day, he may justify new bail, without paying the costs of the former opposition.

Said to have been "very properly overruled." 1. *Taunt.* 57.

Holbrook *v.* Pratt 1. *Mass.* 96.

That *quod cum*, in trespass, is bad on general demurrer.

Overruled, in *Coffin v. Coffin* 2. *Mass.* 364.

Holden *v.* James 11. *Mass.* 396.

Where the Deft. accepted the trust of administrator Dec. 2, 1806 It was said by the Court, p. 400, that the four years, the lapse of which bars an action v. an administrator, expired *Dec.* 2. 1810.

But this expression was afterwards said to be "inaccurate," the time expiring *Dec.* 1. *Vid. Presbrey v. Williams* 15. *Mass.* 193.

Honiton *v.* St. Mary-Axe 2. *Salk.* 535.

Overruled. *Rex v. Inhab'ts of Lubbenham* 4. *D. & E.* 251. *Holt* 578. acc.

Horton *v.* Horton *Cro. Jac.* 74.

"*Mr. Justice Blackstone*" spoke "still more slightly of the case of *Horton v. Horton* in *Cro. Jac.* which, he observed, was not determined, and was only upon a collateral point." 6. *Burr.* 2609.

Horwood *v.* Underhill 10. *East*, 123.

Reversed on error. 4. *Taunt.* 346. *S. C.*

Hostler's case *Yelv.* 66.

Much shaken. See *Brennan v. Cament, ante.*

Hotham *v.* East India Company *Doug.* 272.

The *dicta* of *Ld. Mansfield* and *Buller J.* in that case, that if an agreement had been made in the course of the voyage, that the cargo should be delivered at a different port from that which was stipulated for in the charter party, and if that substituted contract was performed, the compensation for it *might be recovered in an action of covenant framed on the charter party*, were overruled by the Court in *Thompson v. Brown*, 7. *Taunt.* 756.

Houblon *v.* Milner *Lutw.* 1039. 1042.

Said to have been denied to be law, by *Ld. Hardwicke* in the case of *Hart and Holmes. Vid.* 1. *Wils.* 63.

Howis *v.* Wiggins 4. *D. & E.* 714.

That if the payee of a note pay it to an endorser, after bankruptcy

of the maker, he may recover it of the maker, notwithstanding his bankruptcy and certificate.

Cited and disapproved by *Grose J.* in *Cowley v. Dunlop* 7. *D. & E.* 577. *Vide* also *Buckler v. Buttivant* 3. *East*, 71. *Sarratt v. Austin* 4. *Taunt.* 200.

Hughes *v.* **Underwood** 1. *Mod.* 28.

That the sealing of a writ of error is a *supersedeas* to the execution, and this, though the writ was defective and erroneous.

Denied in *Meriton v. Stevens. Willes* 275.

Hulme *v.* **Tenant** 1. *Bro. Ch. Ca.* 16.

This case has been doubted by *Ld. Eldon. Vid. Nantes v. Corrock* 9. *Ves.* 188. *Jones v. Harris* 9. *Ves.* 497.

Hunter *v.* **Beal.** cited 3. *D. & E.* 466.

Overruled in effect by *Richardson v. Goss* 3. *Bos. & Pul.* 119. and *Dixon v. Baldwin* 5. *East*, 175. 184. *Vid. Rowe v. Pickford* 1. *Moore* 526.

Hurst *v.* **Mead** 5. *D. & E.* 365.

Overruled in *Ex parte Charles* 14. *East*, 197. *Walker v. Barnes* 5. *Taunt.* 778.

Hurry *v.* **Mangles** 1. *Camp.* 452.

Doubted and denied in *Austen v. Craven* 4. *Taunt.* 644. and *White v. Wilks* 5. *Taunt.* 176.

Hyckman *v.* **Shotbolt** 3. *Dyer*, 279.

An entire wrong christian name was inserted in a bond, which the obligor signed by his true name, and by this he was sued. Held that he should have been arrested by the name *in* the bond, with an *al. dict.* as to the true name.

This case "may be good law, but the reason and common sense of it are not very palpable." 2. *Caines*, 363.

Hyde *v.* **Foster,** *Dick.* 102.

Denied by *Ld. Redesdale* in *Smith v. Hibern. Mine Comp.* 1. *Sch.* and *Lefr.* 240.

Hancock v Rowd 1 Saund. 336
The opinion of the court in this case has since been denied to be Law.
Reject to La Raymond 2 65

Ashendale v O'Brien 1 Taunt 413
used in Robertson v Goff 4 Barn

and did. 92 - Baley J said "I have reason to know that some of the learned persons who argued that case in the common Pleas were not at that time at all satisfied with the decision"

Harvey v Bush 2 Johns 387
Overruled in 16 Johns 204

Henry v Risk 2 Dallas 265
That interest in no case a movable on account for goods sold & delivered
Said by Smith J. to have been overruled often - 4 Dallas 289 note

Isaac *v.* De Frier *Ambl.* 595.

This case is both imperfectly and erroneously reported in *Ambler*: but is corrected in *Att'y Gen'l v. Price* 17. *Ves.* 371. 373.

Israel *v.* Douglas 1. *H. Bl.* 239.

That a written *promise* to pay money for another, will support an action for money paid to his use.

Denied in *Johnson v. Collins* 1. *East.* 102. and *Taylor v. Higgins* 3. *East.* 171.

The case of Israel v Douglas doubted in Wharton v Walker 4 Barn & Cresswell 163-

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Freeland v Rifft 11 Johns 231

It seems to have been assumed in this case that the want of regular notice to the indorser is not excused by his having taken collateral security from the maker of the note

But the contrary is the better opinion

5 Mass 170 = 2 Greenleaf 207

1 Serg & Rawle 334 =

Pedderton v Atkinson 7 D & E 480 -

One who had received money due from Defft to Plff was admitted a witness for the Defft to prove that he received it in the character of agent for the Plff.

Contradicted 2 Greenleaf 199 & cases cited under Pitt v Yorkshaw supra

Jackson *v.* Gabree 1. *Ventr.* 51.

Overruled. *Sayer's Rep.* 150.

Jackson *v.* Farrand 2. *Vern.* 424.

Ld. Hardwicke called this quite an anomalous case, and said he should lay no stress upon it. 1. *Atk.* 556.

Jacob *v.* Allen 1. *Salk.* 27.

Administrator's attorney collects debts and pays over the money; then a will is found, and administration is repealed. Held that the executor may maintain *ind. assumpsit* against the attorney for money received to his use.

Ruled *contra* in *Pond v. Underwood* 2. *Ld. Raym.* 1210. *Vid.* 4. *Burr.* 1984. *Sadler v. Evans.* Also *Allen v. Dundas* 3. *D. & E.* 125. and *Coup.* 565.

Jacobs *v.* Amyatt 4. *Bro. Ch. Ca.* 542.

Seems questionable since *Doe v. Applin* 4. *D. & E.* 82. *Lyon v. Mitchell* 1. *Maddock Ch. R.* 467. 486.

Jackson *v.* Fairbanks 2. *H. Bl.* 340.

Very much doubted by the Court in *Brandnam v. Wharton* 1. *Barn. & Ald.* 463.

James *v.* Richardson *T. Raym.* 330. in *Cam. Scac.* reversing the judgment of *B. R.*

Reversed in *Dom. Proc.* and the judgment of *B. R.* affirmed. 3. Lev. 232.

James and Johnson 1. *Mod.* 232.

This case goes the length of saying that *every* prescription, when found, must be presumed to have a reasonable commencement.

Denied, in case of a prescription against public right, as to take toll on a navigable river, &c. *Willes* 116.

Jenkins *v.* Pritchard 2. *Wils.* 47.

Statement of the judgment corrected *per Ld. Alvanley* 2. *Bos. & Pul.* 658.

Jewell's case 5. *Rep.* 3. a.

A rent reserved on a lease for years by a bishop, of an incorporeal thing, as of a fair, &c. is good by way of contract between lessor and lessee; but yet such rent is not incident to the reversion, and his successor shall avoid it.

Overruled in *Talentine v. Denton Cro. Jac.* 111. *Vid. Bally v. Wells* 3. *Wils.* 25. *Windsor v. Gover* 2. *Saund.* 302. 304. *n.* 9.

Johnson *v.* Weed & al. 9. *Johns.* 310.

The reasoning of the Judge who gave the opinion, is said to go farther than the rest of the Court meant to go. *Whitbeck v. Van Ness.* 11. *Johns.* 412.

Johnson *v.* Mason 1. *Esp.* 89.

That the confession of the party executing a deed is not admissible evidence; but it must be proved by the subscribing witnesses.

Such confession *is* admissible in *N. York. Hall v. Phelps*, 2. *Johns.* 451.

Johnson *v.* Kenyon 2. *Wils.* 262.

—"that case is inaccurately reported; and I am much disposed to think that the Chief Justice never said what he is there stated to have said." *Per Wils. on J.* in *Bacon v. Searles* 1. *H. Bl.* 88. *Vid.* also *Walwyn v. St. Quintin* 1. *Bos. & Pul.* 658.

Johnson *v.* Procter *Yelv.* 125. *Cro. El.* 809, *Cro. Jack.* 233.

Explained and limited in *Browning v. Wright* 2. *Bos. & Pul.* 23.

2. Jones 156.

"*Holt*—denied the case 2. *Jones* 156. to be law as there reported." 1. *Com. Rep.* 60.

Jones *v.* Eamer *Anstr.* 675.

That putting in and justifying bail before the expiration of the rule to bring in the body, is no bar to an action for the escape.

Overruled in *Murray v. Durand* 1. *Esp.* 87. *Pariente v. Plumbtree* 2. *Bos. & Pul.* 35.

Jones *v.* Williams *Doug.* 214.

That if the condition of a bond be that obligor shall not embezzle, &c. it is necessary, in assigning a breach thereon, to state the particular sum embezzled, and how or from whom it was received.

Overruled in *Barton v. Webb* 8. *D. & E.* 459. *Shum v. Farrington* 1. *Bos. & Pul.* 640.

Jones *v.* Cooper *Cowp.* 228.

A distinction between a promise for the payment for goods, &c. for another *before*, and *after*, delivery; the former being held to be an original undertaking, and so binding,—the latter collateral, and within the stat. frauds.

This distinction overruled. *Matson v. Wharam* 2. *D. & E.* 80. *Anderson v. Hayman* 1. *H. Bl.* 120.

Jones *v.* Lord Say & Sele 8. *Vin. Abr.* 262. 1. *Eq. Abr.* 383. 3. *Bro. P. C.* 458.

Lord Kenyon said it was a case by itself. Cited by *Lawrence J.* in *Wykham v. Wykham* 3. *Taunt.* 316.

Jordaine *v.* Lashbrooke 7. *D. & E.* 601.

Action by indorsee on a foreign bill of exchange unstamped, and *drawer* admitted as a witness to prove the bill drawn in London and dated abroad to defraud the revenue.

In *Massachusetts*, the party to a negotiable instrument, is not admitted as a witness to prove it void, when he gave it currency.

Nayler *v.* ——— 1. *Freem.* 192. last point.

Overruled. *Mayor of London v. Cole* 7. *D. & E.* 583. 1. *Saund.* 248. a. c.

Nesbitt *v.* Lushington 4. *D. & E.* 783.

What *Buller J.* is made to say, that as to the articles enumerated in the memorandum at the foot of the policy, the insured could not recover for any partial loss unless it were the *direct* and *immediate* consequence of stranding, is denied in *Burnett v. Kensington* 7. *D. & E.* 210.

Newland *v.* Osman 1. *Bott's P. L.* 4. *ed.* 460.

Debt on bond conditioned to indemnify the parish against the support of a bastard child. Plea that the Deft. offered to take the child to maintain, he being the putative father, and that the overseers refused: and held good.

Doubted in *Strangeways v. Robinson* 4. *Taunt*, 498.

Newman *v.* Cartony 3. *Bro. Ch. Ca.* 346. in *note.*

Overruled—as *Ellis v. Atkinson*, *ante.*

Nichols *v.* Skinner *Prec. Chan.* 528.

In *Massey v, Hudson* 2. *Merivale* 130. the Master of the Rolls said that, as reported, he could not acquiesce in that decision. And he afterwards said that on examining the *Register's* book, the case appeared to have been wholly misrepresented.

Nicholson *v.* Sedgwick 3. *Salk.* 67.

Overruled in *Grant v. Vaughan* 3. *Burr.* 1522.

Norden's case *Sir Tho. Jones* 88, 3. *Keb.* 778.

That an execution against the goods of the executor for debt *in jure proprio* is a *devastavit, nolens volens.*

Cited and denied 4. *D. & E.* 630. 649.

Noy's Reports.

This book is said to be a loose collection of notes, never intended by *Noy* for the public eye,"—&c. *Co. Litt.* 54. a. in *note.* And is called "a bad authority," *per Buller C. J.* in *Petrie v. Hannay* 3. *D. & E.* 418. and "of no credit," *per Kent C. J.* 2. *Johns.* 72.

Nugent *v.* Gifford 1. *Atk.* 463.

Shaken, 2. *Dick.* 724. *Scott v. Tyler.* 2. *Bro. Ch. Ca.* 431.

Nowell v Smith Cro El. 709
That in respass quare clausum for
damage done by cattle it is not a
good plea that the Pff. was bound
by his covenant to repair and main-
tain the fence
Vide Rust v Low 6 Mass 92

Nichoms v Storey 1 Starkie N.P.C 65—
Cited in Rand v Thomas 5—
Mass 490 Pelham 246 —

Orby *v.* Hales 1. *Ld. Raym.* 3.

That if the Justices at Sessions make an illegal order for discharge of poor prisoners, and the Sheriff discharge them, he is not liable for an escape.

"Cannot be considered as law." *Per Ld. Kenyon* in *Brown v. Compton* 8. *D. & E.* 431. See also the *Marshalsea* case 10. *Rep.* 76.

Orrington *v.* Neale 2. *Stra.* 819. 2. *Ld. Raym.* 1544.

Declaration that Deft. & al. *conjunctim et divisim* promised, &c. held bad.

Contradicted by *Rees v. Abbot Cowp.* 832.

Paine v. Mc Intier 1. *Mass.* 69.

This was debt on an administrator's bond, brought to recover a distributive share of the estate, and *interest* was allowed from the time of the decree of the Court of Probate.

But this part of the case was overruled in *Heath v. Gay* 10. *Mass.* 371.

Page v. Fry 2. *Bos. & Pul.* 240.

Overruled in *Bell v. Ansley* 16. *East* 141. and *Cohen v. Hannam* 5. *Taunt.* 101.

Paget v. Paget 2. *Ch. Ca.* 101.
Brudnell v. Price *Finch* 365.

"From the reports in which they [the above cases] are found, and the positions they affirm, they are not entitled to any great attention." *Per Sir Wm. Grant* in *Richards v. Chambers* 10. *Ves.* 580.

Palmer v. Needham 3. *Burr.* 1389.

Special bail in an action of debt on judgment, discharged, the original debt being under £10.

Overruled in *Lewis v. Pattle* 4. *D. & E.* 570.

Palmer v. Hooke 1. *Ld. Raym.* 727.

On *non assumpsit* Deft. gave in evidence that the debt was attached by foreign attachment in *London*, by *J. S. vs.* Plf. and it was held he should prove that the Plf. was indebted to *J. S.*

Denied *per Ld. Ellenborough*——"there must be some mistake in that report." *Mc Daniel v. Hughes* 3. *East* 367.

Paris v. Salkeld 2. *Wils.* 137.

Plea of bankruptcy *puis le darrein continuance*, and held good.

Overruled in *Tower v. Cameron* 6. *East* 413. and *Willan v. Giordiani* there cited. *Vid.* also 2. *Smith* 441.

Parr v. Eliason 1. *East* 92.

Overruled in *Loires v. Mazuredo* 1. *Starkie* 385. and *Chapman v. Bluck* 2. *Barn. & Ald.* 588.

Parish v. Crawford 2. *Str.* 1251. *Abbot on Shipping* [4 *ed.*] 22.

Overruled, or considerably broken in upon by *Fraser v. Marsh* 2. *Camp.* 517. S. C. 13. *East* 238. *Hutton v. Bragg* 2. *Marsh. R.* 334. 348. 350. 7. *Taunt.* 14. *James v. Jones* 3. *Esp.* 27. *Mackenzie v. Rowe* 2. *Camp.* 482.

Parker v. Kett 12. *Mod.* 472. 1. *Ld. Ray.* 661. *S. C.*

A *dictum* of *Ld. Holt* overruled. *Whitehall v. Squire, Carth.* 104. *Mountfort v. Gibson* 4. *East* 441.

Parker v. Windham *Prec. Ch.* 416.

Overruled, in effect, in *Bond v. Simmons* 3. *Atk.* 20. *Clancy on married women* 357.

Parker *v*, Norton 6. *D. & E.* 695.

Trover for a bill of exchange; and held that bankruptcy which happened after the conversion was no defence; but admitted it would have been a good defence, had the action been for money had and received.

Denied in *Hatten v. Speyer* 1. *Johns.* 42.

Parker's case *Hutt.* 56.

Where *indicari* was written for *indictari* and held bad.

This case is shaken in 2. *Hawk.* 239. *Queen v. Drake* 2. *Salk.* 660. *Rex v. Beach Cowp.* 229.

Patrick *v.* Johnson *Lutw.* 925. 930.

Plea of *molliter manus imposuit* will not justify a battery.—*Semble.*

Denied in *Rowe v. Tutte Willes* 16. The case is correctly reported 3. *Lev.* 403.

Parteriche *v.* Pawlett 2. *Atk.* 383.

Ld. Redesdale doubted the *dictum* of *Ld. Hardwicke*, as to admitting parol evidence to add to a written agreement respecting lands; and said he had *reason to know* that this case was most imperfectly stated by *Atkins.* 1. *Sch. & Lefr.* 35.

Patterson *v.* Tash 2. *Str.* 1178.

Questioned by the Court in *Pickering v. Bush* 15. *East* 38. *Whitehead & al. v. Tuckett* 15. *East* 400.

Payne *v.* Hayes *Buller N. P.* 145.

Overruled in *Wicks v. Gordon* 2. *Barn. & Ald.* 335.

Perk. 96. b. tit. *Devises, sec.* 500.

"A devise by joint-tenant," &c. quoted 3. *Burr.* 1493. Denied in the sense there given it—and explained 3. *Burr.* 1497.

Perrot *v.* Austin *Cro. El.* 232.

Covenant by A. that he will do a certain act, or that his executor shall pay £20. He breaks his covenant and dies. Ruled that debt lies not against the executor.

Ld. Mansfield said this case was "an extraordinary one, in itself;" 3. *Burr.* 1383. and *Wilmot J.* was clear in opinion against it. *ib.* 1384.

Peacock *v.* Spooner 2. *Vern.* 43. 195. 2. *Freem.* 124.

Frequently doubted. *Lyon v. Mitchell* 2. *Maddock Ch. R.* 467. 483. 493.

Petrie *v.* Hannay 3. *D. & E.* 413.

Same point as in *Faikney v. Reynous & al.* overruled, *ante.*

Pettywood *v.* Cooke *Cro. El.* 52.

Putnam *v.* Cooke 3. *Leon.* 180. *S. C.*

Devise of 3 messuages to wife for life, remainder of one of them to

A. and his heirs, of another to B. and his heirs, of another to C. and his heirs, and if any of them die without issue, the survivors to enjoy *totam illam partem* equally to be divided between them; and held that the survivors took only an estate for life.

Per Ld. C. J. Willes—"if I had been to give my opinion on that case, I own, (as I am at present advised) I should have thought otherwise." *Vid. Moore v. Heaseman Willes* 143.

Phipps *v.* Parker. 1. *Campb.* 412.

The subscribing witness to a deed having sworn that it was not executed in his presence, it was held that the deed could not be proved by evidence of the party's hand writing.

Contrary to *Fassett v. Brown, Peake's Ca.* 23. *Grellier v. Neale ib.* 146, *Fitzgerald v. Elsee* 2. *Campb.* 635. *Abbot v. Plumbe Doug.* 216. *Leman v. Dean* 2. *Campb.* 636. *n. Talbot v. Hodson* 7. *Taunt.* 251. *S. C.* 2. *Marsh* 527.

Philpot *v.* Wallet 1. *Freem.* 541. 3. *Lev.* 65. *S. C.*

Overruled. *Cork v. Baker* 1. *Stra.* 34. *Harrison v. Cage* 1. *Ld. Ray.* 386.

Phelps *v.* Barrett 4. *Price R.* 23.

That case is at variance with *Harris v. Hayward* 2. *Marsh. R.* 280. *S. C.* 6. *Taunt.* 569. and cannot be supported. *Per Bailey J.* in *Lewis v. Morland* 2. *Barn. & Ald.* 56.

Pillans & al. *v.* Mierop & al. 3. *Burr.* 1670.

Where *Wilmot J.* holds that a *nudum pactum*, if evidenced by writing, is good, &c.

Skynner Ch. B. "observed upon the doctrine of *nudum pactum* delivered by *Mr. Just. Wilmot*, that he contradicted himself, and was also contradicted by *Vinnius* in his commentary on *Justinian*." *Rann v. Hughes* 7. *D. & E.* 350. *in note.*

Pilfold's case 10. *Rep.* 115. b.

Ld. C. J. Willes in *Witham v. Hill* 2. *Wils.* 92. called this "an extraordinary case;" and it seems to be overruled in *Jackson v. Calesworth* 1. *D. & E.* 71. *Vid. Ward v. Snell* 1. *H. Bl.* 10.

Pilkington's case 5. *Rep.* 76.

On the question whether after judgment for a return irreplevisable, a tender to the bailiff would entitle the party to an action against the principal for detaining the beast, *Holt* said "he was not satisfied with Pilkington's case in that point." 12. *Mod.* 354.

Pilkington *v.* Shaller 2. *Vern.* 374.

"Certainly cannot be supported." *Per Ld. Mansfield* in *Eaton v. Jaques* 2. *Doug.* 455.

Pitcher *v.* Jones *Hardr.* 217.

Overruled. *Atto. Gen. v. Sheriff. Forrest.* 43.

Pincome *v.* Rudge *Hob.* 3.

That upon eviction of the freehold, no personal action of covenant will lie upon the warranty real.

The doctrine of this case is denied *per Parsons C. J.* in *Gore v. Brazier* 3. *Mass.* 544—5. who cites 2. *Brownl.* 164. 165. *sed quære.*

Pope *v.* Onslow 2. *Vern.* 286.

Where A. has two mortgages of different independent estates of the mortgager, one a deficient security and the other more than sufficient; held that the mortgager shall not redeem the last without making good the deficiency of the first.

Doubted by *Ld. Hardwicke*, who forbid the citing of this "imperfect case." 1. *Atk.* 300.

Pope *v.* Foster 4. *D. & E.* 590.

Overruled in *Purcell v. Macnamara* 9. *East.* 157.

Popham *v.* Barsfield 1. *Salk.* 236.

Incorrectly reported. *Vid. Allanson v. Clitherow* 1. *Ves.* 24. 1. *P. Wms.* 54.

Popham's Reports.

—The case of *Brooks v. Brooks Poph.* 125. being cited, *Holt* said "the said part of *Popham's* Reports, being reported by an uncertain author, ought not to be regarded." 1. *Ld. Raym.* 626. *Vid.* 1. *Keb.* 676.

Pordage *v.* Cole 1. *Saund.* 319.

Deft. had agreed by specialty to give Plf. £775. *for* certain lands, and the action was for non-payment, but no averment of a conveyance by Plf. or a tender of one: and on demurrer held well, for that the covenants were independent.

Ld. Kenyon says of this case, and others of the same sort, "the determinations in them outrage common sense." *Goodison v. Nunn.* 4. *D. & E.* 761.

Povey *v.* Brown *Prec. Ch.* 225.

Lord Alvanley calls this, in *Like v. Beresford* 3. *Ves.* 512. a strange case; and says it is contradicted by two cases; one before *Lord Hardwicke*, *Jemson v. Moulson* 2. *Atk.* 417. and the other before *Lord Northington*, *Newman v. Mason* 1. *P. Wms.* 458. *note* 1.

Prideaux *v.* Morris 1. *Lutw.* 82. 2. *Salk.* 502.

That for false return of member parliament no action lies vs. the Sheriff.

Willes C. J. said "he should always set his face against this case." *Wynne v. Middleton Willes*, 605. 606. 1. *Wils.* 125.

Prince *v.* Shute *Molloy b.* 2. *ch.* 10. *sec.* 28.

Said to be mistaken, or not law, in *Master v. Miller* 4. *D. & E.* 336. and *Paton v. Winter* 1. *Taunt.* 420.

Prichard *v.* Quinchant *Noy* 147.

This case, as reported by *Noy*, is said to be very loosely and incorrect note. It is more accurately stated by *Ld. Redesdale* in 1. *Sch. & Lefr.* 296.

Priddle's case *Leach's Crown law*, 382.

That a witness may be asked whether he has not been attainted in *Newgate.*

Overruled in *Rex v. Carcanion* 8. *East.* 44. *Vid. Rex v. Edwards* post.

Prior *v.* Powers 1. *Keb.* 811.

That a juror should not be received to testify that the verdict was the result of chance.

Spencer J. called this "a very unintelligible and ill reported case, in *Smith v. Cheetham* 3. *Caines* 57. where such evidence was held admissible,

Purling *v.* Parkhurst 2. *Taunt.* 237.

That if the memorial of an annuity recites a bond binding the obligor and his heirs, as a bond binding the obligor only, it is not cured by reciting the condition to be for payment by the heirs of the obligor.

Denied in *Hornold v. Underhill* 4. *Taunt.* 846.

Pylus *v.* Smith 3. *Bro.* Ch. *Ca.* 346.

Overruled. *Vid. Freeman v. Cortom* and *Ellis v. Atkinson* with the like point.

Perking *v.* Pasher 1 Mod 124
That a lease by attorney to elect debt must be under seal
Thus leasing to be limited to debt and by instrument under seal See Wood *v.* Hodge 1 Mod 491

Pasher replied on Perkins & Cole that the receipt at the end of an agreement that the parties had sealed it was evidence that they had so sealed it. But it was overruled that there must be a sealing to an agreement that the parties sealed

Sealed the instrument; unless it be described in an indenture or Bond to which a Seal is indispensibly necessary.
Moore v Jones 1 Le Raym. 1561
Cabell v Vaughan 1 Saund. 290 note (1)

The Penalty of a Bond
Interest is not recoverable on a Bond beyond the penalty —
The Courts in Mass. allow interest on the penalty from the commencement of the action — 15 Mass 154.

Pike v Hutchins 1 Mass 421
In this case the Court intimate that in all cases of judgement for a return of goods in replevin the Statute may be considered as fixing the damages at the rate of 6 per cent on the penal sum of the bond.
But the rule is more distinctly stated in Bruce v Learned 4 Mass 614 where the Statute regulation is limited to cases where the Pl. shall fail to pursue his suit, and where goods taken in execution are unlawfully replevied, leaving the damages to be assessed by the Jury —

Henry Tobin 1 H & S 538
That in case of malicious prosecution the verdict of guilt and acquittal are the substantial and material and must be known. Still a Bill

in the declaration
Overruled in 9 Cast 157

Ex parte Quintin 3. *Ves. Jr.* 248.

Disapproved by *Ld. Eldon* in *Ex parte Twogood* 11. *Ves.* 517. 519. and by the *Master of the Rolls* in *Addis v. Knight.* 2. *Merivale*, 117.

Radcliffe *v.* Tate 1. *Keb.* 779.

Denied in *Doe v. Roe* 1. *Taunt.* 55.

Ratcliffe *v.* Burton 3. *Bos. & Pul.* 223.

That an officer must demand admittance, before he can legally break open an *inner* door, &c.

Overruled in *Hutchinson v. Birch* 4. *Taunt.* 619. 626.

Ratcliff *v.* Davis *Yelv.* 178. *S. C. Noy* 137. 1. *Bulstr.* 29. *Cro. Jac.* 244.

Dictum—that if pawnor do not redeem during his life, the right of redemption does not descend to his executor. Same point 1. *Ld. Raym.* 434.

Denied in *Cortellyou v. Laning* 2. *Caines Ca. in Error* 202.

Rattle *v.* Popham 2. *Str.* 992.

That the execution of a power might be good in equity and yet void at law.

But the contrary is holden in *Zouch v. Woolston* 2. *Burr.* 1147. This last decision, however, seems to be questioned by *Ld. Redesdale.* 1. *Sch. & Lefr.* 70.

Raymond's (Lord) Reports. *Vol.* 1.

"These notes were taken in 10. *W.* 3. when *Lord Raymond* was young, as short hints for his own use; but they are too incorrect and inaccurate to be relied on as authorities." *Per Ld. Mansfield* in *Burr.* 36. *Vid.* also 3. *D. & E.* 261.

Rayman *v.* Gold *Moor* 635.

Devise by implication, &c. *Mr. Justice Willes* spoke slightly of this case in *Bendale v. Summerset* 5. *Burr.* 2609.

Read *v.* Snell 2. *Atk.* 642.

Overruled in *Garth v. Baldwin* 2. *Ves.* 646. *Lyon v. Mitchell* 1 *Maddock Ch. R.* 467. 486.

Rector of Chedington's case 1. *Rep.* 153.

Demise to B. for 30 years after the death of C. if C. dies within 10 years. Held that if C. survive the 10 years, the term shall never take effect.

Denied in *Wright v Cartwright* 1. *Burr.* 282.

Regina *v.* Barkin 2. *Ld. Raym.* 1280.

—"a strange note." *Per Ld. Mansfield* 5. *Burr.* 2636. *Vid.* also *Cowp.* 329.

Regina *v.* Taylor 2. *Ld. Raym.* 767.

Overruled in *Rex v. Strong* 1. *Burr.* 251. *Vid. Regina v. Franklyn* 2. *Ld. Raym.* 1038.

Regina *v.* Darby 1. *Salk.* 78.

That judgment *quod capiatur pro fine* is a *final* judgment.
Denied in *Rex v. Robinson* 2. *Burr.* 801.

Regina *v.* Murray 1. *Salk.* 122.

Overruled. *Rex v. Luffe* 8. *East*, 193. *Rex v. Bedell Ca. temp. Hardw.* 379. *Andrews*, 9. *S. C. Pendrell v. Pendrell* 5. *Str.* 925.

Regina *v.* Daniel 6. *Mod.* 100.

Dictum of *Holt C. J.* Denied in *Rex v. Huggins* 2. *East*, 17.

Rex *v.* Meggott *Cas. temp. Hardw.* 77.

Overruled in *Lumley v. Palmer* 2. *Str.* 1000. and *Windle v. Andrews* 2. *Barn. & Ald.* 696.

Rex *v.* Whitney *Bott's Poor-laws.*

"*Mr. Justice Aston* said that this case was incorrectly reported in *Bott's Poor-law*, in respect of what *Mr. Justice Yates* is there mentioned to have said." *Cowp.* 619. *Vid.* 5. *Burr.* 2637. 1. *D. & E.* 626.

Rex *v.* Huggins 2. *Com.* 422.

In an action for escape, for the King's debt, *Comyn* says the Deft. was allowed to plead *non debet* and fresh pursuit.
But in *Parker*, 15. it is said that the rule to shew cause why these pleas should not be pleaded was *discharged*. *Vid.* also *Forrest*, 61. *Bunb.* 96.

Rex *v.* Hollister *al.* Rex *v.* Folly 1. *Bott's poor-law* 78.
Overruled in *Rex v. Gordon* 1. *Barn. & Ald.* 524.

Rex *v.* Clendon 2. *Str.* 870. 2. *Ld. Raym.* 1572.

Indictment for an assault upon *two*; and held not good.
This case was treated "as a case not well considered"—and was held not to be law. *Rex v. Benfield and al.* 2. *Burr.* 984.

Rex *v.* St. Leonard's Shoreditch 12. *Mod.* 212. 2. *Salk.* 483. 524.

That the Sessions may set aside a poor's rate and make a new one, &c.
Overruled in *Rex v. Andrews* 3. *Burr.* 1458.

Rex *v.* Gosper and Shire *Yelv.* 58.

That when a man assigns error in fact, he ought to put himself *en pais.*
Denied, for that the assignment ought to conclude with a verification. *Sheepshanks v. Lucas* 1. *Burr.* 410.

Rex *v.* Inhabitants of Hornsey *Carth.* 212.

Carthew makes *Holt C. J.* to say that where a Justice of the peace presents a highway upon his *view* to be out of repair, the parties are estopped to plead that it is in repair.

But this is contradicted in *Rex v. Wiltshire Justices*, 3. *Burr.* 1530. See other reports of *Holt's* opinion 4. *Mod.* 38. *Holt*, 338. 12. *Mod.* 13. 1. *Show.* 270. 291.

Rex *v.* Bennett 1. *Str.* 101.

That a new trial is not grantable in an information in nature of a *quo warranto*.

But ruled *contra* in *Rex v. Francis* 2. *D. & E.* 484.

Rex *v.* Warden of the Fleet 12. *Mod.* 341.

A dictum of *Holt C. J.* Overruled. *Vid. Rex v. Dixon* 3. *Burr.* 1687. *Anon.* 3. *Mass.* 370. 1. *Tyler* 147. acc.

Rex *v.* Shaw 2. *Salk.* 482.

Overruled. *Rex v. Guardians of poor of Chester* 3. *D. & E.* 496.

Rex *v.* Bishop of Chester & al. 2. *Salk.* 560.

Reversed in *Dom. Proc. Show. Parl. Ca.* 212.

Rex et Regina *v.* Larwood 4. *Mod.* 270. 1. *Ld. Raym.* 29. *Skin.* 574. *Carth.* 306. 1. *Salk.* 168. *S. C.*

Overruled. *Evans v. Harrison Wilm.* 161. 6. *Bro. P. C.* 181. *S. C.*

Rex *v.* Allen *Sir T. Raym.* 197. *Per Twisden J.* and *Prec. Ch.* 50.

Quære if not overruled in 2. *Vern.* 42. 78. 145. *Walker v. Perry.* *Hawk. P. C. c.* 32. *sec.* 10. *Ord on Usury* 35.

Rex *v.* Weston 4. *Burr.* 2507.

Overruled. *Rex v. Clifton* 5. *D. & E.* 502.

Rex *v.* Young and Glennie 2. *Anstr.* 448.

Overruled. *Iggulden v. May* 2. *N. R.* 452. 7. *East* 237. 9. *Ves. Jr.* 235.

Rex *v.* Whiting 1. *Salk.* 283.
Rex *v.* Nunez 2. *Str.* 1043.
Rex *v.* Ellis 2. *Str.* 1104.

In these cases it was held that the sufferer by cheating, perjury, &c. could not be a witness, on an indictment for the offence.

But they are considered and overruled in *Rex v. Broughton* 2. *Str.* 1129. and *Abrahams v. Bunn* 4. *Burr.* 2251. *Vid.* also 3. *D. & E.* 27. 7. *D. & E.* 60. 4. *East* 582. and *Watts' case, post.*

Rex *v.* Vincent 1. *Str.* 481.

That a will of personal estate cannot be said to be forged, after probate granted.

Said to have been impeached in *Rex v. Goodrich. Vid.* 3. *D. & E.* 126.

Rex *v.* Babb 3. *D. & E.* 579.

Same point as in *Lynn, Mayor of, v. Denton, ante.* Overruled in *Mayor of Southampton v. Graves* 8. *D. & E.* 590.

Rex *v.* Edwards 4. *D. & E.* 440.

That a witness may be asked if he has not stood in the pillory for perjury, because the answer subjects him to no punishment.

Contrary to *Cooke's case* 1. *Salk.* 153. where the reason is, that no man shall be compelled to disclose his own shame: And is overruled in *Rex v. Castell Careinion* 8. *East* 77. on the ground that the *record* is the *only* evidence of the conviction. Same law in *N. York, People v. Herrick* 13. *Johns.* 82. for the reason given in *Cooke's* case. *Vid. Macbride v. Macbride* 4. *Esp. Rep.* 242.

Rex *v.* Pedley 1. *Leach C. C.* 365.

Overruled and exploded. *Ld. Eldon* in *Ex parte Oliver* 2. *Ves. & Beame* 244.

Rex *v.* Eriswell 3. *D. & E.* 707.

Two Justices examined a pauper under oath as to his settlement, but did not remove him. Afterwards he became insane, and was removed by the other Justices upon the former examination, which was held to be admissible evidence

But this is overruled in *Rex v. Ferrystone* 2. *East* 54. and *Rex v. Abergwilly ib.* 63.

Rex *v.* Tooley 3. *D. & E.* 707.

"I thought the case of *Rex v. Tooley* had been overruled, though in gentle terms, by the subsequent cases of *Rex v. Swift* (*M.* 30. *G.* 3.) and *Welsford v. Todd.*" (8. *East* 584.) *Per Ld. Ellenborough* in *Hanley v. Cubberly* 15. *East* 251.

Rex *v.* Moor Critchell 2. *East* 66.

Doubted so strongly by the Court, that it may be considered as overruled by *the King v. St. Mary's Leicester* 1. *Barn. & Ald.* 463.

Rex *v.* Russell *Leach's Cro. Cas.* 10.

Rex *v.* Taylor *ib.* 255.

Rex *v.* Rhodes 2. *Stra.* 728.

Rex *v.* Crocker 5. *Bos. & Pul.* 87.

Rex *v.* Thornton *Leach's Cro. Cas.* 728.

That the person whose property may be prejudiced by a forgery, is no witness to prove the forgery, on an indictment for the offence.

The contrary is the law of *Massachusetts. Commonwealth v. Hutchinson* 1. *Mass.* 7. *Commonwealth v. Snell* 3. *Mass.* 82. And of *Pennsylvania. Respublica v. Keating* 1. *Dal.* 110. *Pennsylvania v. Farrell. Addis.* 246. *Respublica v. Ross*, 2. *Dal.* 239. See also *Rex v. Broughton* 2. *Stra.* 1229. *Abrahams v. Bunn* 4. *Burr.* 2251. 3. *D. & E.* 27. 7. *D. & E.* 60.

Rex *v.* Shakespeare 10. *East* 87.

The like point as in *Charnley v. Winstanley, ante.*

Reynell *v.* Langcastle *Cro. Jac.* 545.

Same point as in *Glover v. Kendall, ante.* Overruled in *Bonafous v. Walker* 2. *D. & E.* 126.

Reynolds *v.* Beerling *M.* 25. *G.* 3. *B. R. Doug.* 112. *note.*

Plea of set-off on judgment obtained by Deft. v. Plf. after this action brought, but before plea pleaded, and held good.

"This point cannot be supported." *Per Buller J.* in *Evans v. Prosser* 3. *D. & E.* 186. *Vid.* also *Le Brett v. Papillon* 4. *East* 507. *Andrews v. Hooper* 13. *Mass.* 476. *Campion v. Barker* 2. *Lutw.* 1143.

Rich *v.* Topping 1. *Esp.* 176. *Peake's Ca.* 224.

The indorser of a bill was admitted by *Ld. Kenyon* to prove usury in the transfer of it to the indorsee.

Denied in *Churchill v. Suter* 4. *Mass.* 156. *Vid. acc.* 2. *Dall.* 194. 1. *Day's Ca.* 17. 301. 1. *Caines*, 258. 267. 1. *Hen. & Munf.* 175. 1. *Hayw.* 397. *n.* 2. *Cranch* 202.

Ringstead *v.* Lanesborough *H.* 23. *G.* 3. *B. R.*

Cited in *Corbett v. Poelnitz. Vid. ante.* But overruled in *Marshall v. Rutton* 8. *D. & E.* 545.

Rock *v.* Rock *Yelv.* 175. *Cro. Jac.* 245.

Denied per *Holt C. J.* in *Booth v. Johnson* 7. *Mod.* 145. 2. *Ld. Raym.* 838. *S. C. Barnehurst v. Cabbot Hardr.* 5. *Totnam v. Hopkins Godb.* 350. *acc. Co. Lit.* 303. b.

Roberts *v.* Harnage 6. *Mod.* 228.

Said to be an inaccurate state of the case; and to be more truly reported in 2. *Ld. Raym.* 1042. *Per Ld Mansfield, Coup.* 178.

Robins *v.* Seyward 1. *Str.* 441.

That an attachment for nonperformance of an award is a criminal prosecution.

Denied *per Buller J.* in *Rex v. Myers* 1. *D. & E.* 266.

Robinson *v.* Nichols 2. *Str.* 1077.

Same point as in *Gammage v. Watkin, ante.* Overruled in *Lewis v. Pot[illegible]. D. & E.* 570.

Roberts [illegible] 2. *Show.* 443.

That if a merchant in Ireland consign to one in *England*, and the master [illegible] bill of lading, the merchant in *England* is liable for the freig[illegible]

The acc[illegible] of this note was doubted by the Court in *Christy v. Row* 1. *Taun.* 312. *Vid. Kickbarrow v. Mason* 2. *D. & E.* 63. 1. *H. Bl.* 357. [illegible] 361. [illegible] *v. Lovell* 1. *Mass.* 453.

1. Rol. Abr. 63. *pl.* 31.

Denied *per Holt C. J.* in *Peirson v. Moor* 1. *Com. Rep.* 60.

2. Rol. Abr. 415. *pl.* 8.

Same point as in *Blackwell v. Nash, ante.* Said *per Ld. Kenyon* to "outrage common sense." *Goodison v. Nunn* 4. *D. & E.* 764.

2. Rol. Abr. "Executor" 909. l. *pl.* 5.

That *bona notabilia* shall be accounted £5. at least.

Denied *per Ld. Hardwicke*, as "a single loose saying in an abridgment, contrary to the general reason and principles of law." 2. *Atk.* 659.

2. Rol. Abr. 303. *pl.* 27.

"Cannot be supported." *Per Buller J.* in *Camden v. Home* 4. *D. & E.* 398.

2. Rol. Abr. 306. *pl.* 10. and 307 *pl.* 13.

That if a parson lease to a parishioner the tithes of his estate, and afterwards sue for them in kind, no prohibition lies, &c.

Denied *per Buller J. Camden v. Home* 4. *D. & E.* 397.

2. Rol. Abr. 491. *D. pl.* 5.

That if a *supersedeas* comes after goods taken in execution, and before sale, they shall not be sold, &c.

Denied in *Meriton v. Stevens*, 4 *Willes* 261.

Rundall *v.* Eley *Carter* 92. 170.

Overruled. *Doe v. Beauclerk* 11. *East* 666. *Porter v. Fry* 1. *Vent.* 199. *Walloon v. Fitzgerald Skin.* 125. acc.

Rue *v.* Mitchell 2. *Dall.* 58.

"You have taken a false oath before 'Squire R." *innuendo* perjury in a cause before *W. R.* Esq.—held good after verdict.

Contradicted by *Packer v. Spangler* 2. *Bin.* 60. *Shaffer v. Kintzer* 1. *Bin.* 537.

Ryall *v.* Larkin 1. *Wils.* 155.

Impeached in *Ridout v. Brough Coup.* 135.

Ruggles v. Kimball 12 Mass 337
What is said by the C. J. that a
minister to be entitled to the benefit of Stat
1811 Ch 6 must not only be ordained
over a particular Society, but the Society
must be obligated to him for his support
is contradicted by the Court in
4 Greenleaf 108 —

Reeve v Leonard et al 1 Mass 93
That a grantor shall not be received as
a witness to testify relating to the title of
Land which he has conveyed.
Overruled in 4 Mass 441 -

Reeve v Smith 16 Mass 206
That an action for money Lad and rec^d
will lie to recover a sum paid in part of
a promissory note, but not indorsed there
on, judgement having been recovered on
the note for the whole amount, execution
issued but not satisfied; and this though
the judgement creditor agreed at the time
to indorse the amount on the execution
Said to be overruled vide Marriott v
Hampton 7 D & E 269 -

Rich v Col Cowper 636
Where it is said that for repairs on a
ship there is always a remedy against
the vessel — must be taken with this
limitation viz that this remedy lies only
for repairs made in a foreign port. But
for repairs made at home the credit is
presumed to be given to the employer.
See Wilkins v Carmichael Doug 101
7 D & E 312

Robinson v Touge 10 Mss 680 Cox's note
Overruled by Ex Eden & in 8 Vesey 382 -

Salisbury *v.* Bagot 1. *Ch. Ca.* 278. 2. *Freem.* 21.

Bill for specific performance of articles made 60 years before. Defence *fine and non-claim:* and on this ground the bill was dismissed, though it was proved that Deft. had notice of the trust, &c.

But the contrary is holden in *Bovey v. Smith*, for that the fine is but a conveyance, which, if made to one having notice of the trust, could not alter the estate. 2. *Ch. Ca.* 124. 2. *Com. Dig.* 627. 1. *Sch. Lefr.* 378.

Salkeld's Reports *Vol.* 3.

"The Ch. Justice [*Parsons*] observed that the third volume of *Salkeld's* reports was a book of no authority, being a posthumous collection, and consisting only of a compilation of such cases as *Salkeld* himself had considered unworthy of publication." 8. *Mass.* 258. *note. Vid.* also 7. *Mod.* 269. 2. *East* 8. *note.*

Savage's case 2. *Leon.* 109. 208,

The custom was, that if a man married a customary tenant, had issue, and outlived her, he should be tenant by curtesy. The wife took a customary tenement by descent, *during coverture*, and it was held that the husband should not be tenant by curtesy, as the wife was not customary tenant at marriage.

Denied to be law. 2. *Ld. Raym.* 1020.

Savage *v.* Dent 2. *Str.* 1063.

A barrel of beer being left in the house by the lessee, it was holden that the house could not be considered a *vacant* possession.

Denied in *McDougal v. Sitcher* 1. *Johns.* 44.

Sayer *v.* Bennett cited *Watson, partn.* 382.

Questioned in *Waters v. Taylor* 2. *Ves. & Beame* 299.

Scarman *v.* Castel 1. *Esp.* 270.

That a master is bound to pay for medicines, &c. for his servant.

The contrary had before been holden in *Newby v. Wilshire. Vid.* 1. *Esp.* 739. and was afterwards fully recognized in *Wennall v. Adney* 3. *B. & Pul.* 247.

Scarborough *v.* Lyrus *Latch*, 252.

Dictum of *Jones J.* overruled in case of *Gratitudine* 3. *Rob. Adm.* 272. 2. *Molloy b.* 2. *c.* 11. *sec.* 11. *acc.*

Schuirmell *v.* Lourada 4. *Taunt.* 695.

Explained and corrected in *Tremani v. Barrett and Tremani v. Faith* 6. *Taunt.* 88.

Scott *v.* Sheplrard 2. *W. Bl.* 893.

The Court slighted the authority of this case in *Fitzsimmons v. Inglis* 5. *Taunt.* 534.

Scott *v.* Scott *Ambl.* 383. *Eden R.* 453.

The case said to be right, but the reasons wrong. *Vid. Doe v. Timmins* 1. *Barn. & Ald.* 530. 532.

Serlested's case *Latch* 202.

"*Ld. Ellenborough.* The reasoning in that case seems to prove too much; for it goes the length of shewing that obtaining money under a threat of any thing, however improbable,, would be indictable at common law." 6. *East* 139.

Seton *v.* Slade 7. *Ves. Jr.* 278. *Per Ld. Eldon C.*

Overruled. *Vid. Growsock v. Smith, ante.*

Sherborn *v.* Coleback 2. *Ventr.* 175.

Overruled. 1. *Lutw.* 180. *Whitgrave v. Chauncey. Smith v. Airey* 6. *Mod.* 128. *Walker v. Walker* 12. *Mod.* 258.

Sheriff of Essex' case *Hob.* 202.

Overruled. *James v. Pierce* 1. *Vent.* 269. *Lenthal v. Lenthal* 2. *Lev.* 109.

Sheriff *v.* Potts 5. *Esp.* 96.

Overruled. *Emmerson v. Heelis* 2. *Taunt.* 38. *Raine v. Bell* 9. *East* 195. *Laroche v. Oswyn* 12. *East* 131. *Cormack v. Gladstone* 11. *East* 347. *Urquhart v. Barnard* 1. *Taunt.* 450. *Vid. Tappenden v. Randall, post.*

Shep. Touchst. *p.* 274.

Where it is said if a man lease to A. for 80 years if he so long live; but if he die within the 80 years, remainder over, that this remainder is void, &c.

Denied in *Wright v. Cartwright* 1. *Burr.* 282.

Short *v.* Pratt 6. *Mass.* 496.

The *second* award in this case, made by *two only* of the referees, was a complete reversal of the former award, and in favor of a different party; which reconciles this case with *May v. Haven* 9. *Mass.* 325. which, otherwise, would seem to contradict it.

Shutt *v.* Procter 2. *Marsh. R.* 227.

Doubted and shaken in *Overseers of St. Martin v. Warren* 1. *Barn. & Ald.* 491. and *Coles v. Gowen* 6. *East* 110. adhered to.

Signoret *v.* Noguire 2. *Ld. Raym.* 1241.

Same point as in *Bacon v. Waller, ante.*

Siderfin's Reports.

Siderfin is called "a young reporter," in 2. *Ventr.* 243.

Skelton *v.* Hawling 1. *Wils.* 258.

Not very intelligible as reported by *Wilson:* but is clearly stated in 1. *Saund.* 219. *d. Williams' ed. note. Vid.* 3. *East* 4.

Skillington v. Norton 1. *Freem.* 412. 3. *Keb.* 422. 2. *Lev.* 142. S.C.

Overruled. *Stokelane v. Doulting Fortescue*, 219. *Clifton v. Churchman Andr.* 314.

Saint Paul & ux. v. E. of Rivers. *Sir T. Raym.* 128. *in margine.*

Overruled. *Barber v. Fox* 2. *Saund.* 137. *Porter v. Bille* 1. *Freem.* 125.

Smith v. Sharp 1. *Salk.* 139. 5. *Mod.* 133. 12. *Mod.* 86. S. C.

Overruled. *Gyte v. Ellis* 1. *Str.* 228. 11. *Mod.* 313. *Leach's ed. S. C. Mayor of London v. Tench* 7. *Mod.* 173. *Challoner v. Davis* 1. *Lutw.* 570.

Smith v. Surridge 4. *Esp.* 26.

That the sentence of a Court of Admiralty sitting, under a commission from a belligerent, in a *neutral* country, is binding, if *acquiesced in by the government of the neutral country.*

Overruled in *Havelock v. Rockwood* 8. *D. & E.* 276. and is contrary to the case of the *Flad Oyen* 1. *Rob. Rep.* 144. *Vid. Donaldson v. Thompson* 1. *Camp.* 429.

Smith's case *Tr.* 8. *Jac.* 1. 2. *Rol. Abr.* 685.

That the borrower is an incompetent witness on a penal information against the usurer.

Overruled in *Abrahams v. Bunn.* 4. *Burr.* 2253. *Vid. Commonwealth v. Frost* 5. *Mass.* 53.

Smith v. Dovers *Doug.* 427.

Plea of usury; and held that the Plf. may traverse the corrupt agreement and conclude with a verification.

Said *per Lawrence J.* to have been overruled. *Charles v. Marsden* 1. *Taunt.* 224.

Snee v. Prescott 1. *Atk.* 245.

—"miserably reported in the printed book." Said *per Buller J.* in 6. *East* 29. *note;* where there is a better statement of the same case.

Sorrell v. Carpenter 2. *P. Wms.* 483.

Dictum of King C. Overruled in *Worsley v. E. of Scarborough* 3. *Atk.* 392.

Southcote's case 4. *Rep.* 83. *b.*

The position that to *keep*, and to *keep safely*, are one and the same thing.

Denied in 2 *Ld. Raym.* 911. *n.* 1. *Com. Rep.* 133. *Cogge v. Barnard. Vid. Jones on bailm.* 58.

Spalding v. Moore 6. *D. & E.* 363.

Overruled in *Richards v. Heether* 1. *Barn. & Ald.* 29.

Sparrow *v.* Carruthers 2. *Str.* 1236.

That if the owner of goods insured take them out of the ship into his own lighter, the underwriters are discharged.
Doubted in *Hurry v. Roy. Exch. Assur. Marshall on Ins.* 167.

Squib *v.* Hole 2. *Mod.* 30. 1. *Freem.* 193.

That an officer is not chargeable for an escape, if the cause of action arose out of the jurisdiction of the Court by whose process the person was taken.
Overruled in *Higginson v. Sheif* 1. *Com. R.* 153. *Vid.* 3. *Com. Dig.* 335. 1. *Salk.* 201.

Steele *v.* Wright cited 1. *T. R.* 708.

Questioned and overruled in *Hare v. Grove* 3. *Anstr.* 687. and *Holtzapffel v. Baker* 18. *Ves.* 115.

Strike *v.* Bates 1. *Lev.* 207. 208. 1. *Sid.* 326.

That by *proper county* in *Stat.* 16. and 17. *Car.* 2. *cap.* 8. is intended the county where the issue *arises.*
Overruled in *Craft v. Boite* 1. *Saund.* 246. *Vid. n.* 3. and the cases there cited.

Staats *v.* Ten Eyck 3. *Caines.* 111.

That in an action on a covenant of quiet enjoyment forever, the measure of damages is the consideration money and interest.
Not law in *Connecticut: Vid. Kirb. Rep.* 3. Nor in *Massachusetts: Gore v. Brazier* 3. *Mass.* 523. also 2. *Mass.* 433. 4. *Mass.* 108.

Stansfield *v.* Johnson 1. *Esp.* 101.
Still *v.* Wardell 2. *Esp.* 610.

Overruled. *Vide Sheriff v. Potts, ante.*

Stickle *v.* Pearson.

Cited in *Thompson v. Stent* 1. *Taunt.* 322. as having been wrongly decided.

Stitt *v.* Wardell *Park on Ins.* 388. 6. *ed.*

Doubted in *Urquhart v. Barnard* 1. *Taunt.* 450.

Stomfil *v.* Hicks 2. *Salk.* 413. *pl.* 2. 1. *Ld. Raym.* 480.

Same point as in *Anon.* 2. *Salk.* 413. *pl.* 4. *ante.* Denied *per Buller J.* in *Birch v. Wright* 1. *D. & E.* 380.

Stowe's case *Cro. Jac.* 603.

Overruled. *Rex v. Everard* 1. *Ld. Raym.* 638. *Holt* 173. 1. *Salk.* 195. *S. C.*

Stone *v.* Lingwood 1. *Str.* 651.

Held by *Ld. Mansfield* in *Green v. Farmer* 4. *Burr.* 2218. not to be law.

Strelly v. Winson 1, Vern. 297.

The ground of this decision is said to be mistated; the true ground being that the part owner who complained had not expressly dissented. See *Horn v. Gilpin Amb.* 255. *Abbot on Shipping*, 87. note (n.)

Scott v. Lifford 1, *Camp.* 249.

Denied in its application to this country. *Ireland v. Kip* 11. *Johns.* 232.

Sears v. Brinks 3. *Johns.* 210. 215.

That the *consideration*, as well as the promise, must be in writing, to take it out of the Statute of frauds.

Doubted *per Kent C. J.* in *Leonard v. Vredenburg* 8. *Johns.* 37. *Vid. Minet, ex parte* 14, *Ves. Jr.* 190. *Hunt v. Adams* 5. *Mass.* 360. *Stadt v. Lill* 9. *East* 348. 1. *Camp.* 242. S. C. *Violett v. Patton* 5. *Cranch* 142. Also, *Mr. Day's* note to *Wain v. Warlters* 5. *East.* 10. *American ed.*

Sears v Fowler 2 Johns 272
Overuled in Cunningham v Morrell
10 Johns 204

Shipwell v Jones 1 Sid. 12
That an Attachy cannot accord & compound in case where sume may recovered at Com
Overuled in 2 Vents. 243

Pinney v Barnard 1 Rol Rep 430 -
Def was seised of a house super edificata adjoining a house of Pltf & Pltf in digging a cellar under his own house undermined part of Pltf so that it fell Judgt for Pltf -
This case does not show whether the digging was wholly on Pltf own land or not, nor whether Pltf house was of old or a new foundation and

denied in Thurston v Hancock 12 Mass. 427

Saunderson v Judge 2 H Black 509 that a memorandum at the bottom of a note or acceptance designating the place of payment is no part of the contract

Overruled 2 Brod & Bing. 165 - vide 4 Johns 248 - 17 Mass 389 - 3 Green Ch 167 - 17 Johns 248 - 4 Mass 265 - 15 East 459 -

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Tappenden *v.* Randall 2. *B. & P.* 472.

That no *interest* can be recoved, in an action for money had and received.

Denied in *Wood v. Robbins* 11. *Mass.* 504. *Vid.* also *Pease v. Barber* 3. *Caines*, 266. *Emmerson v. Heelis* 2. *Taunt.* 38. *Raine v. Bell* 9. *East* 195. *Laroche v. Oswyn* 12. *East* 131. *Cormack v. Gladstone* 11. *East* 347. *Urquhart v. Barnard* 1. *Taunt.* 450.

Tassel *v.* Lewis 1. *Ld. Raym.* 743.

"3. If the indorsee of a bill accepts but two pence from the acceptor, he can never after resort to the drawer."

Overruled in *Wabwyn v. St. Quintin* 1. *B. & P.* 652. But see *Cory v. Scott* 3. *Barn. & Ald.* 619.

Tawney *v.* Crowther 2. *Bro. Ch. Ca.* 318.

An agreement respecting lands was prepared in writing and kept by Deft. who refused to sign it, but afterwards wrote a letter alluding to it, which *Ld. Thurlow* thought was tantamount to signing, and decreed for the Plf.

Ld. Redesdale says this case is not accurately reported, and that he could never bring his mind to agree with *Ld. Thurlow's* decision. *Clinan v. Cooke.* 1. *Sch. & Lefr.* 34.

Taylor *v.* Stibbert 2. *Ves. Jr.* 437.

Doubted as to one point in *Crofton v. Ormsby* 2. *Sch. & Lefr.* 582. 599.

Thomas *v.* Thomas 6. *D. & E.* 671.

The doctrine laid down by *Laurence J.* that the intent of the devisor was to be collected *from what passed at the time of making the will*;——examined and restricted in its application. *Jackson v. Sill* 11. *Johns.* 219.

Thorne *v.* Pitt *Select Cas. temp. King C.* 54.

Overruled in *White v. Hayward* 2. *Ves.* 461. by *Ld. Hardwicke*, and in *Lowter v. The Mayor, &c. of Colchester* 2. *Merivale R.* 113.

Thompson *v.* Leach 3. *Mod.* 296. 301. *Carth.* 211. 435.

That a surrender by an infant or an ideot is void *ab initio*.

Denied in *Zouch v. Parsons* 3. *Burr.* 1794.

Thynne *v.* Rigby *Cro. Jac.* 314.

Award that the Deft. should give security to Plf. for payment of £16. at two days, held void for the uncertainty *what* security he should give, whether by bond or otherwise.

"Though much weight is due to the authority of *Croke*, probably if the case reported there were a new case, it would be decided otherwise." *Simmons v. Swaine* 1. *Taunt.* 549.

Tissard *v.* Warcup 2. *Mod.* 280. 1*st point.*

Overruled. *Smith v. Barrow* 2. *D. & E.* 476. *Hyat v. Hare Comb.* 383. *Ditchburne v. Spracklin* 5. *Esp.* 32. *Spalding v. Mure* 6. *D. & E.* 365. *Blackwell v. Ashton Sty.* 50. *Aleyn* 21. *S. C. acc.*

Timrod *v.* Shoolbred 1. *Bay* 319.

That selling for a sound price, raises in law a warranty of the thing sold; and that this warranty extends even to faults *unknown* to the seller.

Contrary to *Pickering v. Dowson* 4. *Taunt.* 779. *Emerson v. Brigham* 10. *Mass.* 197. *Vid.* also 3. *Day's Rep.* 116. *note* 2. and authorities there cited.

Titchburne *v.* White 1. *Str.* 145.

Contradicted in *Gibbon v. Paynton* 4. *Burr.* 2298.

Tipping *v.* Smith 2. *Stra.* 1024.

That an award that all manner of proceedings, if any, depending at law, should be no farther prosecuted, is bad, because not final.

Denied by *Kent J. in Purdy v. Delavan* 1. *Caines* 304. *Vid.* also *Kyd on awards* 211. *Simmons v. Swaine* 1. *Taunt.* 549.

Tobey *v.* Webster 3. *Johnson* 468.

That lessor cannot maintain trespass *qu. cl.* for a wrong done while his tenant was in actual possession of the land.

The contrary is holden in *Starr v. Jackson* 11. *Mass.* 519.

Tomkins *v.* Barnett 1. *Salk.* 22.

That money paid on a usurious contract cannot be recovered back. *Lord Mansfield* said this had been denied a thousand times. *Clark v. Shee Cowp.* 199. *Vid.* also *Doug.* 697. 2. *Burr.* 1005. 1. *D. & E.* 286.

Took *v.* Glascock 1. *Saund.* 260.

Tenant in tail conveys by bargain and sale to another and his heirs, &c. Held that the grantee has only an estate descendible for life of tenant in tail.

But in *Machell v. Clerk* 1. *Com. Rep.* 119. it is held that the grantee has a base fee simple, determinable by entry of the issue in tail, &c. agreeably to 3. *Rep.* 84. *b. Vid.* also 7. *Mod.* 18. 2. *Salk.* 619.

Touteng *v.* Hubbard 3. *Bos. & Pul.* 291.

Overruled in *Flindt v. Scott* 5. *Taunt.* 674. and *Baret v. Meyer* 5. *Taunt.* 824.

Townsend *v.* Rowe 2. *Sid.* 109.

Overruled. *Dodswell v. Nott* 2. *Vern.* 317. *Atto. Gen. v. Wyburg* 1. *P. W.* 599. *Burton v. Hinde* 5. *D. & E.* 174. *City of London v. Unfree Merchants* 2. *Show.* 146.

Townsend *v.* Windham 2. *Ves.* 10.

Where *Ld. Hardwicke* is made to say "If there is a voluntary conveyance of real estate, &c. by one not indebted, &c.——it will be good,"

Per Ld. Mansfield "I rather doubt *Ld. Hardwicke's* saying that." *Chapman v. Emery Cowp.* 280.

Towers *v.* Osborne 1. *Str.* 506.

Same point as in *Clayton v. Andrews, ante.*

Trevilian *v.* Pyne 1. *Salk.* 107.

That in trespass to real property, where Deft. justifies as bailiff, &c. the Deft.'s authority is not traversable. Overruled in *Chambers v. Donaldson* 11. *East* 66.

Truscott *v.* Carpenter 1. *Ld. Raym.* 229.

That if the cause of action arose out of the jurisdiction of an inferior Court, Deft. ought to plead it; and cannot afterwards shew it in any collateral action against the Plf. or the officer executing the process. Overruled in *Moravia v. Sloper Willes* 36.

Turner *v.* Hulme 4. *Esp.* 11.

The maker of an usurious note being arrested for the debt, procured a third person to join with him in a new note for the same debt: and *Ld. Kenyon* held that the usury could not be set up in defence against the last note.
Denied in *Bridge v. Hubbard* 15. *Mass.* 100.

Jaffe v Baker 2 Esp R. 1187.
The doctrine in this case that a presumption of payment after 20 years non claim does not arise in case of a mortgage of it does on a bond was denied by Sir J. Plumer M.R. in Jackson v Wade Ref. 223

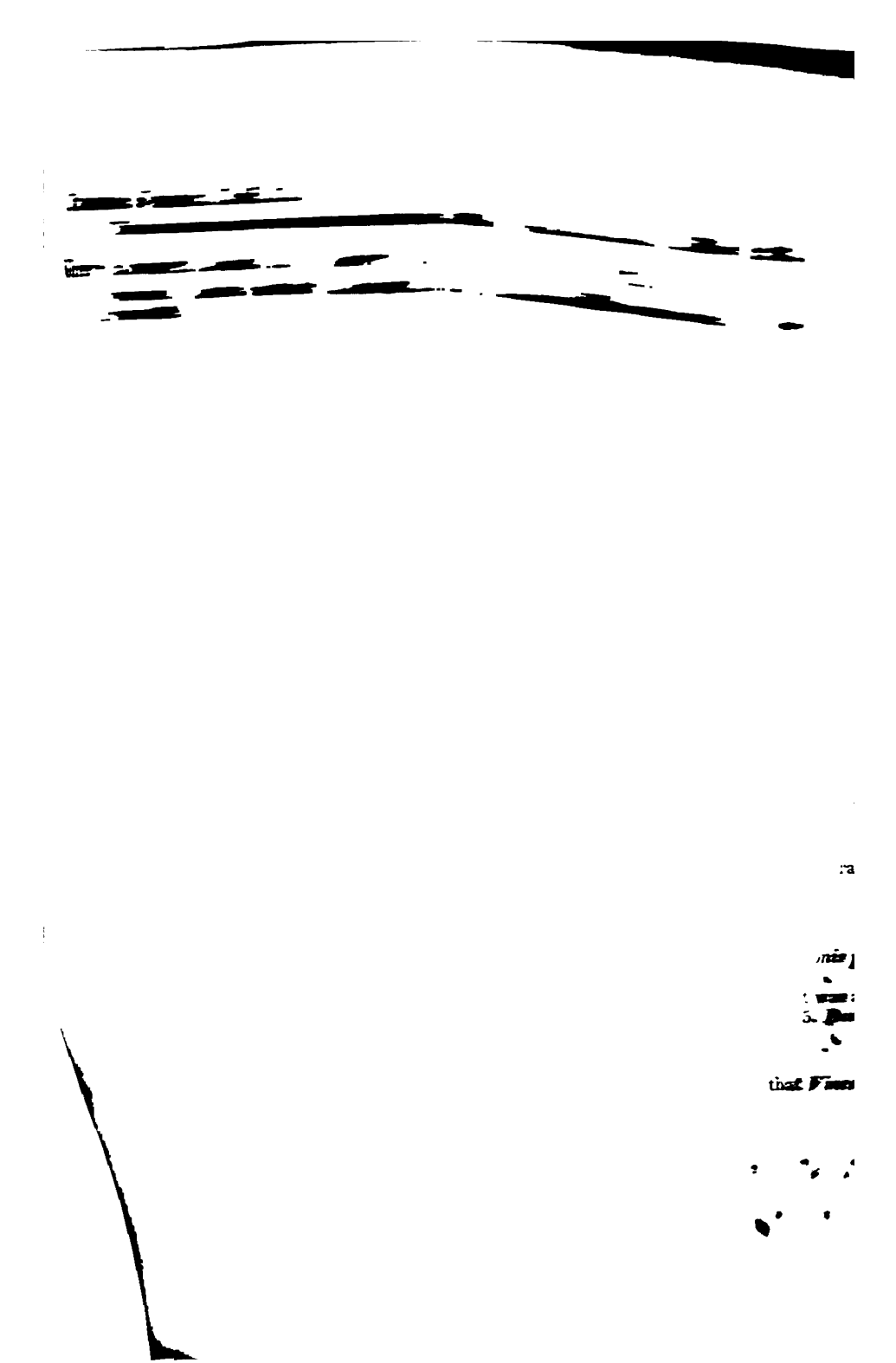
Thompson v Morgan 3 Camp 101.
The doctrine of Lee Chamberlain that an action would not lie on a bill of exchange is contradicted in 3 Wheaton 385.

Utterson v. Vernon 3. *D. & E.* 539.

This case was subsequently revised and overruled, in 4. *D. & E.* 570.

Urrey v. Bowers 2. *Brownl.* 8. 20. *Moor* 913. *pl.* 1291.

Overruled. *Fossett v. Franklin T. Rayn.* 235. *Elliot v. Starr* 1. *Freem.* 299.



Vaise *v.* Delaval 1. *D. & E.* 11.

Ld. Mansfield rejected the affidavit of a juror, who stated that the jury, being divided, tossed up, and the Plf. won.

But such evidence was held admissible in *Smith v. Cheetham* 3. *Caines* 57. So in *Massachusetts*. *Grinnell v. Phillips* 1. *Mass.* 542. But in *Massachusetts* it was afterwards held that such affidavit should not be admitted to prove the misconduct of jurymen to join in a verdict. *Bridge v. Eggleston* 14. *Mass.* 245.

In *Pennsylvania* the practice agrees with that in *England*. *Claggage v. Swan* 4. *Bin. Rep.* 150.

Qu. also *Rex v. Wooler* 2. *Starkie* 111. that no affidavit can, in *any case*, be admitted to show that one of the jury did not assent to the verdict pronounced by the foreman.

Vallejo *v.* Wheeler *Cowp.* 143.

Buller J. says there is an error in this report, in stating that *Darwin* chartered the ship to *Brown*, the captain, when in fact she was chartered by *Brown* to *Darwin*. 1. *D. & E.* 330. *Marshall on Ins.* 454.

Vaux's case 4. *Rep.* 44.

Vaux was indicted for murder, and upon special verdict there was judgment of acquittal. Being again indicted for the same offence, he pleaded *autrefois acquit*, but the plea was held bad, because his life had never been in danger.

Said to have been shaken. 1. *D. & E.* 69. and doubted *per Livingston J.* in *New-York*, in *The People v. Barrett* 1. *Johns.* 72.

Vernon's Reports.

"Usually inaccurate." *Per Ld. Loughborough.* 1. *H. Bl.* 326.

1. Ventr. 238. the case cited by *Hale.*

Denied to be law *per Ld. Mansfield*, on account of the fraud practised on the carrier. *Gibbon v. Paynton* 4. *Burr.* 2298.

Villars *v.* Parry & Moore 1. *Ld. Raym.* 182.

Debt v. an executor, and judgment against him *de bonis propriis*, and held not amendable.

But contradicted by *Short v. Coffin*, where the fault was amended after error brought, and *in nullo est erratum* pleaded. 5. *Burr.* 2730.

Viner's Abridgment.

"*Viner* is not an authority. Cite the cases that *Viner* quotes; *that* you may do." *Per Foster J.* 1. *Burr.* 364.

Wain v Walters 5 East 10
Wholly overruled in 17 Mass 122
But the decision in Wain v Walters
by law confirmed in 4 Barn & Ald. 495 Saunders v Wakefield

Watson v Bourne 16 Mass 337
Denied in 12 Wheaton 363

Whitcomb v Whiting Douglass 654
Very much doubted in Alleyne
v Gardyold 2 Barn & Cres. 23 -

Webster v Lee 5 Mass 234
That a note paid before indorsement is void in the hands of a
bona fide indorsee
This is to be understood only of notes
paid after having become due. For
if the payment be made before the
note is at its maturity the maker
cannot show it in bar of an ac-
tion of a bona fide indorsee
See 1 Phillips Evidence 13 note (a)

Williams v Faulkner 4 Barn 295
Overruled in Atkinson v Taylor
2 Wilson 117 -

Wain *v.* **Warlters** 5. *East* 10.

That the consideration of the promise to pay the debt of another, as well as the promise itself, should be in writing, to take it out of the Statute of frauds.

Doubted *per Parsons C. J.* in *Hunt v. Adams* 5. *Mass.* 360. *Vid.* also *Egerton v. Matthews* 6. *East.* 307, *Sears v. Brinks, ante*, and *Bailey v. Freeman* 11. *Johns.* 223.

Walker *v.* **Constable** 1, *Bos. & Pul.* 307. 2. *Esp.* 659.

That in an action for money had and received the nett sum received was all which could be recovered, without interest.

But in *Massachusetts* interest is given on money fraudulently obtained or wrongfully kept back, &c. *Wood v. Robbins* 11. *Mass.* 504, and cases there cited. So in *New-York*. *Pease v. Barber* 3. *Caines* 266. *Vid.* also *Emmerson v. Heelis* 2. *Taunt.* 38. and *Sheriff v. Potts* and *Tappenden v. Randall, ante.*

Walker *v.* **Chapman** *Loffi's Rep*, 342. cited *Doug.* 454.

Mansfield C. J. called this "a very strange case." *Aubert v. Walsh* 3. *Taunt.* 283.

Walker *v.* **Reeves** 2. *Doug.* 461. *n.*

Same principle as in *Eaton v. Jaques, ante;* and is said to have been denied. *Powel on Mort.* 241.

Walker *v.* **Packer** *Cooke's Ca.* 47,

That a pauper shall pay costs for all defaults, &c. Denied in *Rice v. Brown* 1. *Bos. & Pul.* 39.

Walker *v.* **Burnell** *Doug.* 319. 3. *D. & E.* 322.

The *dictum* of *Ld. Mansfield*, that creditors, who prove their debts under a new commission, cannot question its validity.

Overruled in *Rankin v. Horner* 16. *East* 193.

Walwyn *v.* **St. Quintin** 1, *Bos. & Pul*, 652.

Overruled in *Cory v. Scott* 3. *Barn. & Ald.* 619.

Ward *v.* **Macauley** 4. *D. & E.* 483.

Lord Kenyon afterwards retracted that part of his opinion which states that *trover* would lie under the circumstances of this case. *Vid. Gordon v. Harper* 7. *D. & E.* 11.

Warneford *v.* **Warneford** 2. *Str.* 764.

That sealing a will is sufficient signing, within the Stat. of frauds. Denied in *Smith v. Evans* 1. *Wils.* 313. also in 1. *Ves. Jr.* 13.

Watts *v.* **Hart** 1. *Bos. & Pul.* 134.

Overruled in *Ex parte Charles* 14. *East* 197. and *Walker v. Barnes* 5. *Taunt.* 778.

Watts *v.* **Bellas** 1. *P. Wms*, 60.

The reasoning of *Ld. Keeper Wright* in this case "was too large, owing to his being then new in the Court," &c. *Per Ld. Hardwicke* 3. *Atk.* 199.

Mainwaring v Beaty 5 East 10
Wholly overruled in 17 Mass 122
But the decision in Mainwaring v Beaty
has been confirmed in 4 Barn & Ald. 495 Saunders v Wakefield

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Walker v. Chapman *Loft's Rep.* 342. *cited Doug.* 476.

Mansfield C. J. called this "a very strange case" *Anderson v.* [illegible] 3. *Taunt.* 283.

Walker v. Reeves 2. *Doug.* 461. *n.*

Same principle as in *Eaton v. Jaques*, *ante*, [illegible] denied. *Powell on Mort.* 241.

Walker v. Packer *Cooke's Ca.* 57.

That a pauper shall pay costs for al[illegible] *v. Brown* 1. *Bos. & Pul.* 36.

Walker v. Burnell *Doug.* 3. R. 2. D. & E. 671.

The dictum of *Ld. Mansfield* [illegible] under a new commission. [illegible] Overruled in *Rawlins v. Turner* 1. *Ld. Raym.*

Walwyn v. St. Quintin 1. *Bos. & P.* [illegible]

Opposed in *Cory v. Scott* 3. *Bos. & Pul.*

Ward v. Macauley 4. *T. R.* & *E.* [illegible]

Lord Kenyon [illegible] states that [illegible] *Vid. Gordon v. Harper* 7. *T. R.* [illegible]

Warneford v. Warneford 2. *Str.* [illegible]

That stealing a wit[illegible] Denied in [illegible]

Watts v. Hart 1. *Bos. & P.* [illegible]

Overruled in [illegible] 5. *Taunt.* 716.

Watts v. Bellas 1. *T. R.* [illegible]

The [illegible] owing to [illegible] 3. *Atk.* [illegible]

Wate *v.* Briggs 1. *Ld. Raym.* 35. 2. *Salk.* 565. 5. *Mod.* 8.

Debt by Plf. *in jure suo proprio* for escape of one in execution on a judgment recovered by Plf. as administrator; held illy brought.

Denied in *Bonafous v. Walker* 2. *D. & E.* 128. *Morse v. James* *Willes* 127.

Watts' case *Hardr.* 321–2.

That in perjury, the party grieved shall not be a witness.

Overruled in *Rex v. Broughton* 2. *Str.* 1229. *Abrahams v. Bunn* 4. *Burr.* 2251.

In forgery, the party injured is still incompetent as a witness, in *England.* 4. *East* 582. So in *Connecticut.* 1. *Root*, 307. But not in *Pennsylvania.* 1. *Dall.* 110. Nor in *Massachusetts.* 1. *Mass.* 7. *Vid.* 1. *Esp.* 97. *Day's ed. note* 2.

Weaver *v.* Boroughs 1. *Str.* 648.

That where there is a special agreement, the Plf. cannot go upon a general *indebitatus assumpsit.*

Denied. *Doug.* 651. *Buller's N. P.* 139.

Weakley ex dim. *Yea v. Bucknell Cowp.* 473.

That an *equitable* title is a good defence *at law*, in ejectment.

Overruled in *Doe v. Wharton* 8. *D. & E.* 2. *Vid.* also 5. *East* 132. and *Goodtitle v. Bayley, ante.*

Weaver *v.* Clifford *Yelv.* 42.

Misreported. *Vid.* 1. *Brownl.* 120. *S. C. Bac. Abr. Escape* A, 1. *acc.*

Webb *v.* Harvey 2. *D. & E.* 757.

Ld. Kenyon said there was certainly a mistake in the report of this case, as to the time of service of the *scire facias.* 1. *East*, 88.

Webb *v.* Bell 1. *Sid.* 440.

That the horses and harness fastened to a cart loaded with corn, may be distrained for rent.

Doubted *per Willes C. J.* in *Simpson v. Hartopp Willes*, 517.

Wedgwood *v.* Bailey 1. *Freem.* 532.

Reversed on error, *T. Raym.* 463.

Welch *v.* Creagh 8. *Mod.* 373. 1. *Str.* 680.

That debt will not lie on a promissory note. Overruled. *Meredith v. Chute* 2. *Ld. Raym.* 760. *Bishop v. Young* 2. *Bos. & Pul.* 78.

Weston *v.* Mowlin 2. *Burr.* 969.

What *Ld. Mansfield* is made to say in *pp.* 978–9. that whatever will give the mortgage-money, will pass the land with it; and that the estate in the land is the same thing as the money due, &c.——is denied by *Trowbridge J. Vid.* 3. *Mass. supp.* 557.

Wharton *v.* Pitts 2. *Salk.* 548.

Overruled. *Velthusen v. Ormsley* 3. *D. & E.* 316.

Wheeler's case *Godb.* 218.

That it belonged to the judges of the Courts of law, and not to the ecclesiastical Courts, to decide whether an act of parliament was broken or not.

Cited and disapproved in *Camden v. Home* 4. *D. & E.* 398.

Whistler *v.* **Newman** 4. *Ves.* 129.

Overruled in effect by *Wagstaff v. Smith* 9. *Ves.* 920. *Sturgis v. Corp* 13. *Ves.* 190. *Essex v. Atkins* 14. *Ves.* 342. *Vid. Clancy on married women* 118. 123. *Sugden on Powers* 106.

Whittingham *v.* **Thornburg** 2. *Vern.* 206.

That where a policy is void for fraud in the assured, he may have a return of the premium.

Denied *per Ld. Mansfield* at *nisi prius* in *Tyler v. Hearn, Park,* 218. and overruled in *Chapham v. Fraser, ib. Marshall on Ins.* 562.

Whitechurch ex parte 1. *Atk.* 58.

That a person may be arrested on *Sunday,* on a warrant for contempt in disobeying the order of Court.

Denied *per Buller J.* in *Rex v. Myers* 1. *D. & E.* 265. because not a criminal prosecution, as formerly holden.

Whitehouse *v.* **Frost** 12. *East.* 614.

After purchase of 40 tons of oil in one cistern, and a re-sale of 10 tons thereof, it was held that the purchaser of the 10 tons could recover for them in trover, without any previous separation.

Doubted in *Austen v. Craven* 4. *Taunt.* 644. and *White v. Wilks* 5. *Taunt.* 176.

Wilton *v.* **Hardingham** *Hob.* 129.

Overruled in *Brook v. Hustler* 1. *Salk.* 56. *Vid.* 1. *Wils.* 251. *per Lee C. J.*

Willey *v.* **Cawthorne** 1. *East* 398.

Doubted in *Horwood v. Underhill* 4. *Taunt.* 346.

Wilson *v.* **Smith** 3. *Burr.* 1550.

That the words in the memorandum at the foot of policies of assurance import an exception only, and not a condition.

Overruled in *Burnet v. Kensington* 7. *D. & E.* 210.

Williams *v.* **Brown** 2. *Stra.* 996.

This case adopts the principle of *Comber v. Hill* 2. *Str.* 969, *quod vid. ante.*

Williams, *ex parte,* 4. *D. & E.* 124.

Same point as in *Brickwood v. Fanshaw, ante.*

Overruled in *Clark v. Donovan* 5. *D. & E.* 694.

Wilson *v.* **Ducket** 3. *Burr.* 1361.

Same doctrine as in *Whittingham v. Thornburg, suprd.*

Windham *v.* **Clere** *Cro. El.* 133. 1. *Leon.* 187.

That in an action against a justice for maliciously granting a warrant without accusation, it is not necessary to state that the prosecution is at an end.

"Certainly cannot be law." *Per Ashurst J.* in *Morgan v. Hughes* 2. *D. & E.* 231.

Witham *v.* **Barker** *Yelv.* 148.

Much shaken in *Lambert v. Strowther*, *Willes* 221. *Chambers v. Donaldson* 11. *East* 65.

Witham *v.* **Lewis** 1. *Wils.* 48.

That if, in a special verdict, the jury find a recovery, but omit to find a writ of seizen or execution, it cannot be presumed by the Court: and no advantage can be taken of the recovery, nor will the Court award a *venire fa. de novo*.

Ld. Kenyon said this had always been considered a "strange case;" and Judges of succeeding times had been astonished that no application had been made to *C. B.* to rectify the defect of that recovery. *Goodright v. Rigby* 5. *D. & E.* 179.

Woodbridge *v.* **Bingham** 12. *Mass.* 403.

This report of the case is erroneous. *Vid.* 13. *Mass.* 556. *S. C.*

Wood *v.* **Ingersole** *Cro. Jac.* 260.

A testator devises three distinct parcels of land severally to his three sons, and if either of them should die, the other surviving should be his heir;—the eldest has issue and dies:—held that the descent of the fee upon him at the father's death had merged the freehold devised, and destroyed the contingent remainder.

Resolved not to be law, in *Fortescue v. Abbot* 2. *Lev.* 202. *Sir Thl. Jones* 79. *Vid.* 2. *Saund.* 382. *c. n.*

Wormleighton and Hunter's case, *Godb.* 243.

Overruled in *Cowell v. Edwards* 2. *Bos. & Pul.* 268.

Wyndham *v.* **Ld. Wycombe** 4. *Esp.* 16.

In an action for *crim. con. Ld. Kenyon* ruled that the notorious undisguised infidelity of the husband was a complete answer to the action.

But *Ld. Alvanley* afterwards denied this, and held that such conduct went only in mitigation of damages. *Bromley v. Wallace* 4. *Esp.* 237. *Vid. Finnerty v. Tipper* 2. *Camp.* 72. *acc.*

Whatley v Merchiner et ae 2 Esp 607
That a judgement and decree in a controversy between the partners is conclusive [redacted] partnership between one partner and a stranger —
Questioned in 3 Greenleaf 165

Widgery v Haskell 5 Mass 154 —
dictum overruled in 12 Pick 272

Yate *v.* Willan 2. *East* 128.

Explained and limited in *Clark v. Gray* 6. *East*, 564.

Yea *v.* Lethbridge 4. *D. & E.* 433.

That for taking insufficient pledges in replevin, the Sheriff is not liable beyond the value of the distress taken, though that was not equal to the rent in arrear.

Denied in *Concanen v. Lethbridge* 2. *H. Bl.* 36. and in *Evans v. Brander ib.* 547. where the rule of damages was, the liability of the sureties, viz. double the value of the goods taken.

Yea *v.* Bucknell *Comp.* 473.

Vid. Weakley ex dim. Yea v. Bucknell, ante.

Young *v.* ——— 1. *Ld. Raym.* 725.

That the public are entitled, of common right, to towing paths on the banks of navigable waters.

Denied in *Ball v. Herbert*, 3. *D. & E.* 263. where *Buller J.* calls this case "a very loose and inaccurate note."

Zouch v. Woolston 2. *Burr*, 1147.

Where *Ld. Mansfield* is made to say that whatever is an equitable ought also to be deemed a legal execution of a power," &c.

This was doubted by *Ld. Redesdale* in 1. *Sch. & Lefr.* 70. *Vid.* also *Roe* v. *Prideaux* 10. *East* 186.

RULES AND ORDERS

OF THE

SUPREME COURT OF THE UNITED STATES

I.

February Term, 1790.

Ordered, That the Clerk of this Court do reside and keep his office at the seat of the national government, and that he do not practice, either as an attorney or a counsellor, in this Court, while he shall continue to be Clerk of the same.

II.

February Term, 1790.

Ordered, That (until farther order) it be requisite to the admission of attorneys, or counsellors, to practice in this Court, that they shall have been such for three years past in the Supreme Courts of the State to which they respectively belong, and that their private and professional characters shall appear to be fair.

III.

February Term, 1790.

Ordered, That counsellors shall not practice as attorneys, nor attorneys as counsellors, in this Court.

IV.

February Term, 1790.

Ordered, That they shall respectively take the following oath, viz. I, do solemnly swear, that I will demean myself (as an attorney or counsellor of the Court) uprightly, and according to law, and that I will support the Constitution of the United States.

V.

February Term, 1790.

Ordered, That (unless and until it shall be otherwise provided by law) all process in this Court shall be in the name of the President of the United States.

VI.

February Term, 1791.

Ordered, That the counsellors and attorneys admitted to practice in this Court, shall take either an oath, or, in proper cases, an affirmation, of the tenor prescribed by the rule of this Court on this subject, made February term, 1790. viz. I do solemnly swear, (or affirm, as the case may be,) that I will demean myself, as attorney or counsellor of this Court, uprightly and according to law, and that I will support the constitution of the United States.

VII.

August Term, 1791.

The Chief Justice, in answer to the motion of the Attorney-General, informs him and the bar, that this Court consider the practice of the Court of King's Bench, and of Chancery, in England, as affording outlines for the practice of this Court; and that they will, from time to time, make such alterations therein as circumstances may render necessary.

VIII.

February Term, 1795.

The Court give notice to the gentlemen of the bar, that hereafter they will expect to be furnished with a statement of the material points of the case, from the counsel on each side of the cause.

IX.

February Term, 1795.

The Court declared, that all evidence on motions for a discharge upon bail, must be by way of deposition, and not *viva voce*.

X.

August Term, 1796.

Ordered, That process of subpœna, issuing out of this Court in any suit in equity, shall be served on the defendant sixty days before the return day of the said process; and farther, that if the defendant, on such service of the subpœna, should not appear at the return day contained therein, the complainant shall be at liberty to proceed *ex parte*.

XI.

February Term, 1797.

It is ordered by the Court, that the Clerk of the Court to which any writ of error shall be directed, may make return of the same by transmitting a true copy of the record, and of all proceedings in the cause, under his hand and the seal of the Court.

XII.

August Term, 1797.

It is ordered by the Court, that no record of the Court be suffered by the Clerk to be taken out of his office but by the consent of the Court; otherwise to be responsible for it.

XIII.

August Term, 1800.

Ordered, That the plaintiff in error be at liberty to show, to the satisfaction of this Court, that the matter in dispute exceeds the sum or value of 2,000 dollars, exclusive of costs; this to be made appear by affidavit, and days notice to the opposite party, or their counsel. Rule as to affidavits to be mutual.

XIV.

August Term, 1801.

Ordered, That counsellors may be admitted as attorneys in this Court, on taking the usual oath.

XV.

August Term, 1801.

It is ordered, That in every cause when the defendant in error fails to appear, the plaintiff may proceed *ex parte*.

XVI.

February Term, 1803.

It is ordered, That where the writ of error issues within thirty days before the meeting of the Court, the defendant is at liberty to enter his appearance, and proceed to trial; otherwise the cause must be continued.

XVII.

February Term, 1803.

In all cases where a writ of error shall delay the proceedings on the judgment of the Circuit Court, and shall appear to have been sued out merely for delay, damages shall be awarded at the rate of ten per centum per annum, on the amount of the judgment.

XVIII.

February Term, 1803.

In such cases where there exists a real controversy, the damages shall be only at the rate of six per centum per annum. In both cases the interest is to be computed as part of the damages.

XIX.

February Term, 1806.

All causes, the records of which shall be delivered to the clerk on or before the sixth day of the term, shall be considered as for trial in the course of that term. Where the record shall be delivered after the sixth day of the term, either party will be entitled to a continuance.

XX.

February Term, 1806.

In all cases where a writ of error shall be a *supersedeas* to a judgment, rendered in any Court of the United States, (except that for the District of Columbia,) at least thirty days previous to the commencement of any term of this Court, it shall be the duty of the plaintiff in error to lodge a copy of the record with the Clerk of this Court, within the first six days of the term, and if he shall fail so to do, the defendant in error shall be permitted, afterwards, to lodge a copy of the record with the Clerk, and the cause shall stand for trial in like manner as if the record had come up within the first six days; or he may, on producing a certificate from the Clerk, stating the cause, and that a writ of error has been sued out, which operates as a *supersedeas* to the judgment, have the said writ of error docketed and dismissed. This rule shall apply to all judgments rendered by the Court for the District of Columbia, at any time prior to a session of this Court.

XXI.

February Term, 1806.

In cases not put to issue at the August term, it shall be the duty of the plaintiff in error, if errors shall not have been assigned in the Court below, to assign them in this Court, at the commencement of the term, or so soon thereafter as the record shall be filed with the clerk, and the cause placed on the docket; and if he shall fail to do so, and shall also fail to assign them when the cause shall be called for trial, the writ of error may be dismissed at his cost; and if the defendant shall refuse to plead to issue, and the cause shall be called for trial, the Court may proceed to hear an argument on the part of the plaintiff, and to give judgment according to the right of the cause.

XXII.

February Term, 1808.

Ordered, That all parties in this Court, not being residents of the United States, shall give security for the costs accruing in this Court, to be entered on the record.

XXIII.

February Term, 1808.

Ordered, That upon the Clerk of this Court producing satisfactory evidence by affidavit, or acknowledgement of the parties, or their sureties, of having served a copy of the bill of costs, due by them respectively in this Court, on such parties or their sureties, an attachment shall issue against such parties or sureties respectively, to compel payment of the said costs.

XXIV.

February Term, 1810.

Ordered, That upon the reversal of a judgment or decree of the Circuit Court, the party in whose favor the reversal is, shall recover his costs in the Circuit Court.

XXV.

February Term, 1812.

There having been two associate justices of the Court appointed since its last session; *It is Ordered*, That the following allotment be made of the Chief Justice, and of the Associate Justices of the said Supreme Court among the Circuits agreeably to the act of Congress in such case made and provided, and that such allotment be entered or ordered, viz.

For the first Circuit—The Honourable Joseph Story. For the second Circuit—The Honourable Brockholst Livingston. For the third Circuit—The Honourable Bushrod Washington. For the fourth Circuit—The Honourable Gabriel Duvall. For the fifth Circuit—The Honourable John Marshall, Ch. J. For the sixth Circuit—The Honourable William Johnson. For the seventh Circuit—The Honourable Thomas Todd.

XXVI.

February Term, 1816.

It is Ordered by the Court, That in all cases where farther proof is ordered by the Court, the depositions which shall be taken, shall be by a commission to be issued from this Court, or from any Circuit Court of the United States.

XXVII.

February Term, 1817.

Whenever it shall be necessary or proper, in the opinion of the presiding judge in any Circuit Court, or District Court, exercising Circuit Court jurisdiction, that original papers of any kind should be inspected in the Supreme Court upon appeal, such presiding judge may make such rule or order for the safe keeping, transporting, and return of such original papers, as to him may seem proper, and this Court will receive and consider such original papers in connection with the transcript of the proceedings.

XXVIII.

February Term, 1817.

In all cases of Admiralty and Maritime Jurisdiction, where new evidence shall be admissible in this Court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this Court, or from any Circuit Court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories to be filed by the party applying for the commission, and notice to the opposite party, or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross interrogatories within twenty days from the service of such notice. Provided, however, that nothing in this rule shall prevent any party from giving oral testimony in open Court, in cases where by law it is admissible.

XXIX.

February Term, 1821.

Whenever pending a writ of Error or Appeal in this Court either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit;—and thereupon the cause shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon on motion obtain an order that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of Error or Appeal dismissed; and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the same reversed if it be erroneous. Provided, however, that a copy of every such order shall be printed in some newspaper at the seat of Government, in which the Laws of the United States shall be printed by authority, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

XXX.

February Term, 1821.

Ordered, After the present term, no cause standing for argument will be heard by the Court, until the parties shall have furnished the Court with a printed brief or abstract of the cause, containing the substance of all the material pleadings, facts and documents on which the parties rely, and the points of law and facts intended to be presented at the argument.

RULES

OF THE

CIRCUIT COURT OF THE UNITED STATES,

FOR THE FIRST CIRCUIT.

I.

Attornies and Counsellors of the Supreme Court of the United States, or of any Circuit Court of the United States, or of the District Court of the United States, for this District, or of the highest State Court of any State, may, on producing proof thereof, and of a fair private and professional character, be admitted to the like grade in this Court.

II.

Graduates of any college or university, who have studied law *three* years in the office of any Attorney or Counseller of this Court, or of any Circuit Court within the first Circuit, and have been admitted to practice in some State Court within the same Circuit for one year at least, may be admitted as Attornies of this Court, on producing proper recommendations.

III.

Gentlemen who are not graduates, but have studied law *four* years in the office of any Attorney or Counsellor as aforesaid, and have been admitted to practice in some State Court as aforesaid for one year at least, may be admitted as Attornies of this Court on the terms aforesaid.

IV.

Graduates who have studied law *four years*, or gentlemen not graduates, who have studied law *five years* in the office of any Attorney or Counsellor as aforesaid, may be admitted Attornies of this Court on the terms aforesaid.

V.

Gentlemen who have been admitted to practice at least three years in any Court, not the highest in a State, may be admitted as Attornies of this Court on the terms aforesaid.

VI.

Attornies of this Court, or of any other Circuit Court of the United States, within the First Circuit, after two years practice, may be admitted as Counsellors of this Court on proper recommendation.

VII.

Counsellors of this Court, or of any other Circuit Court of the United States, within the first Circuit, of six years standing in practice, may be called by the Court to the Degree of *Barrister;* and after ten years standing in practice may be called to the Degree of *Sergeant at Law.*

VIII.

Attornies, Counsellors, Barristers and Sergeants shall, on admission, take an oath, or in proper cases an affirmation, as follows: "I
do solemnly swear, (or affirm, as the case may be) that I will demean myself as an Attorney or Counsellor, &c. (as the case may be) of this Circuit Court, uprightly and according to law, and that I will support the Constitution of the United States.

IX.

No person, unless at least a Counsellor of this Court, shall be permitted to argue any questions of law or fact; but Counsellors may practice as Attornies.

X.

Not more than two counsel on the same side shall be allowed to argue any question to the Court or Jury.

XI.

No Attorney or Counsellor of this Court shall, on pain of being struck from the roll, be bail in any cause depending before this Court.

XII.

All sham pleadings will be discountenanced; and, if necessary, the Court will punish such conduct.

XIII.

The party holding the affirmative shall in all cases except on motions, open and close the question before the Court or Jury; and on motions, the party moving shall open and close.

XIV.

All actions shall be entered within the two first days of the return term; and not afterwards, unless by special order of the Court, on affidavit.

XV.

All pleas in abatement and to the jurisdiction shall be filed in Court within two days after the entry of the action, and not afterwards; and if consisting of matter of fact, *dehors* the record, shall be verified by affidavit.

XVI.

Amendments in matters of form shall be allowed as of course on motion; but if the defect or want of form be shewn as cause of special demurrer, the Court will impose terms on the party amending.

XVII.

Amendments in matters of substance may be made on payment of costs: but if applied for after a joinder of an issue of fact or law, the Court will, in their discretion, refuse or grant the application upon special terms.

XVIII.

In actions of assumpsit for goods sold or delivered, services performed, &c. whereof an account shall be annexed to the writ, the Plaintiff may declare in *indebitatus assumpsit*, and on motion may without costs or continuance at any time before issue joined file any of the common counts, applicable to the items in the account, including also the money counts and *insimul computassent*.

XIX.

If there be a general verdict on a declaration containing several counts, the plaintiff may at any time pending the term, on motion, have leave to amend the verdict and enter it on any count on which the evidence by law would at the trial have entitled him to recover, and may have leave to strike out of his declaration any defective counts.

XX.

Motions for leave to plead double must be made to the Court within the four first days of the return term, if the action be at that time entered.

XXI.

The defendant or tenant in any action, and the plaintiff in replevin, may, on leave granted, plead as many pleas as are necessary for his defence; but no incompatible pleas will be allowed.

XXII.

No special pleas will be allowed, unless by leave of Court, where the matter may be given in evidence under the general issue.

XXIII.

All special pleas shall be filed within the first seven days of the return term, unless a different time be assigned by the Court; but the general issue may be pleaded at any time before the cause is called on for trial.

XXIV.

In all cases where either party has leave to amend, the other party shall be entitled also to amend, if his defence require it.

XXV.

The defendant may at any time before issue joined, move the Court to consolidate unnecessary actions, or to strike out superfluous counts.

XXVI.

If the defendant plead a sham plea, he shall not have liberty to withdraw it, and plead to the merits.

XXVII.

Either party may obtain a rule on the other party to plead, reply, &c. within a given time; and if the party so ruled neglect to file his pleadings at the time, all his prior pleadings *may* be struck out, and judgment shall be entered of *nonpros*, or of

default, as the case may require, unless the rule be enlarged by the court.

XXVIII.

Any issue of fact may be struck out for the purpose of putting in a general demurrer.

XXIX.

On motions grounded on facts, the facts shall be verified by affidavit.

XXX.

Oyer of all specialties declared on, may be had on motion at the return term; but not afterwards, unless by special order of Court, on affidavit of special cause.

XXXI.

In all causes touching the realty, either party may, on proper terms, have a view by the Jury, if such view appear to the Court necessary to complete justice at the trial; and the costs of the view shall be borne as the Court shall direct.

XXXII.

If in the same cause there be a demurrer in law, and an issue in fact, the demurrer shall, unless the Court otherwise for good cause direct, be first argued and determined.

XXXIII.

Motions for new trials, or in arrest of judgment, must be made in writing, and assign the reasons thereof, and be filed within two days after the verdict; otherwise they will not be heard.

XXXIV.

All depositions taken in a cause shall be opened and filed at the return term; and shall not be taken out of Court without

special leave of the Court; but shall remain subject to all objections notwithstanding the filing.

XXXV.

All causes standing for trial shall, unless specially assigned, be tried in the order of their entry on the docket; and if either party be not ready at the time when called for trial, judgment of nonsuit, or default, as the case may require, will be entered.

XXXVI.

Causes standing for trial will not be allowed to be continued even by consent of parties, unless for good cause shewn.

XXXVII.

Motions for continuance of a cause standing for trial, grounded on the want of material testimony, will not be sustained unless supported by a special affidavit, which shall state the name of the witness—the facts he is expected to prove—the grounds of such expectation—the endeavours which have been made to procure his attendance or deposition—the expectation that the party has of procuring his attendance or deposition at a future term—and a declaration by the party, that without such testimony he cannot safely proceed to trial. And a continuance, when allowed, shall be upon payment of costs, or such other terms as the Court may impose—but no continuance on account of want of material testimony shall be allowed, if the other party agree to admit the facts which the witness is expected to prove.

XXXVIII.

In actions on promissory notes, or bills of exchange, the Defendant, if maker or drawer, or acceptor, shall not be permitted to deny his own signature, unless upon affidavit made of reasonable cause, necessary for his defence. Nor if indorser, shall he be permitted to deny the signatures of prior indorsers, unless on like affidavit.

XXXIX.

Where *non est factum* is pleaded to a specialty, the party shall note at the foot of his plea, what he means to contend under the issue.

XL.

In actions founded on contract, no arrest of person or attachment of property (unless where the United States are a party) shall be made for a sum exceeding one thousand dollars, unless upon affidavit made before some Judge of a Court of the United States, or of a State Court, alleging to the best knowledge and belief of the party, the sum claimed in the writ is justly and truly due to the Plaintiff—which affidavit shall be annexed to, and returned with the writ. And in no case shall the officer serving the writ attach property, or arrest the body of the defendant, to an amount exceeding 50 per cent. beyond the sum so claimed.*

XLI.

Attachments of property in suits at common law, may be discharged in all cases by the Defendant's recognizing in Court with sureties, according to the course of the Court, for the payment of the judgment, which shall be recovered by the Plaintiff upon the rendition of such judgment. And in case of default of such payment for the space of ten days (Sundays exclusive) thereafter, execution shall issue jointly against the principal and sureties for the full amount. But in cases where a writ of error, operating a *supersedeas*, shall be issued and served within the ten days aforesaid, the execution shall not issue.

XLII.

Where bail on arrest appears to have been taken in an unreasonable sum, or the party is on like arrest imprisoned, the Court will on motion direct a discharge of the party, or bail, as the case may require, on acknowledging a bail recognizance, with sureties, in such sum as the Court shall require.

* This rule is suspended by order of the Court.

XLIII.

After service of the writ, either party may, during the vacation, obtain a rule, signed by the Clerk, from the Clerk's office, requiring the other party to plead, reply, rejoin, &c. as the case may require, within thirty days after the service of the rule, if so many days remain during the vacation—And such rule shall be of the same effect as if obtained in Court during the term—and the party neglecting to comply with such rule, shall have judgment against him of *nonpros* or default, as the case may require, unless the Court shall in term, for good cause shewn, allow further time to plead.

XLIV.

In actions at common law, the bail may, upon payment of costs, surrender their principal in discharge at any time during the term of the Court to which the *scire facias* against the bail is returnable, and before the Jury is dismissed.

XLV.

In actions where the sum demanded is certain, or may be made certain by computation, the Defendant, on motion, may have leave, on terms, to bring the money which he admits due into Court, and thereupon so much of the Plaintiff's demand shall be struck out of the declaration; and if the Plaintiff will not accept the money with costs to the time of bringing the money into Court, he shall proceed at his peril, and upon the trial of the issue, the Plaintiff shall not be permitted to give evidence for the sum brought into Court; and if upon the trial the Plaintiff shall not prove a greater sum due than the money brought into Court, the verdict shall be for the Defendant.

XLVI.

In actions on mortgages, where the sum due is not controverted, the Defendant may bring into Court all the principal money, interest and costs, and thereupon the Court will stay all further proceedings in such actions.

XLVII.

Where a repleader is awarded, each party shall pay his own costs.

XLVIII.

All original writs at common law (except in cases where the statutes of the United States otherwise require) shall be served at least fourteen days before the return day thereof, and shall be indorsed by the Attorney prosecuting the same.

XLIX.

Where the Plaintiff resides without the State, he shall, at the first term, give security for costs, if the Defendant require it: And unless the Court shall grant further time, in case of his non-compliance, the action shall be *non-prossed* or discontinued.

L.

Bills of costs shall be taxed by the Attorney of the party entitled to them—but no execution shall issue therefor, until an *allocatur* is granted thereon by a Judge of the Court, or the taxation is assented to in writing by the Attorney of the opposite party.

LI.

The payment of costs may, in proper cases, be enforced by attachment.

LII.

No *prochein ami* shall be allowed to prosecute any action, unless he shall at the return term, give such security as the Court may direct, that the property recovered in the suit shall be faithfully accounted for to the Infant, or his legal Guardian.

LIII.

In proper cases commissions to take the depositions of witnesses will be granted by the Court, and the Court will name the

Commissioners. No commissions will be allowed to issue until the whole interrogatories have been filed in the Clerk's office for fourteen days by the party applying for the commission, so that the opposite party may have opportunity to file cross interrogatories. In special cases, however, the Court will allow supplemental interrogatories to be filed before the commissioners, and impose other terms on the parties. And in vacation a commission may be issued upon application to either of the Judges of the Court, in the same manner as may be granted by the Court in term.

LIV.

No argument will be heard by the Court on questions of law arising on special pleadings, special verdicts, cases stated and agreed, cases reserved, writs of error, or on motions in arrest of judgment, or for new trials, until paper books containing copies or abstracts of all the material papers have been delivered to the Judges, at least one day before the argument, and also a brief statement of the points intended to be insisted on by the Counsel on each side. And the costs of the paper books, unless otherwise directed by the Court, shall be taxed against the party against whom judgment shall be rendered.

LV.

Where judgment is against the defendant by default or on demurrer, the Court, if required by the plaintiff, will assess the damages, if the action is on a single bill, promissory note, bill of exchange, or other obligation for money, or on an account stated, or other contract where the sum is certain—But where the damages are uncertain, they shall, if either party request it, be assessed by the Jury; and in other cases, on the application of both parties, they may be assessed by the Jury*.

LVI.

In causes brought to recover the forfeiture annexed to any articles of agreement, covenant, or other specialty, where an is-

*See Judiciary Act of 1789, ch. 20, sec. 26.

sue is joined to the Jury, the plaintiff may assign as many breaches as he pleases; and if the issue be found for the plaintiff, the Jury shall asssess damages on so many breaches as shall be proved. And where the forfeiture, breach, or non-performance shall appear by the default or confession of the defendant, or upon demurrer, if the damages shall be uncertain, and either party request it, the damages shall be assessed by the Jury on breaches to be assigned by the Plaintiff; otherwise the Court will assess such damages as are due according to equity. And judgment in all the foregoing cases shall be entered for the penalty and costs; but execution shall issue for such damages only as are assessed as aforesaid and costs.*

LVII.

No deposition returned under seal to the Clerk's office, in any suit at common law, shall be opened in vacation, unless by consent of the parties in writing certified, or by order of a Judge of the Court.

LVIII.

Writs of error and appeals shall be heard and argued at the return term, unless otherwise ordered by the Court for good cause shewn.

LIX.

If neither party appear when the cause is called for argument, the writ of error or appeal will be dismissed.

LX.

The plaintiff in error shall assign errors within the two first days of the term, and the defendant shall join the issue within two days after the assignment, unless in either case the Court shall, by special order, enlarge the time.

*See Judiciary Act of 1789, ch. 20, sec. 26.

LXI.

No *certiorari* for diminution alleged shall issue, unless upon affidavit of the party, shewing reasonable ground of diminution, and in what such diminution consists.

LXII.

In every cause where the defendant in error fails to appear, the plaintiff in error may proceed *ex parte.*

LXIII.

The plaintiff in error may by affidavit shew and prove the value of the matter in dispute, in order to sustain the jurisdiction of the Court.

LXIV.

In all cases where a writ of error operates a *supersedeas*, if the judgment be affirmed, and the writ appear to have been sued merely for delay, damages shall be awarded at the rate of 10 per cent. on the amount of the judgment; but in cases where there exists a real controversy, the damages shall be awarded at the rate of 6 per cent. only.

LXV.

Process of *subpœna*, issuing out of this Court in any suit in equity, shall be served on the defendant fourteen days before the return day of the said process; and if the defendant, on such service of the *subpœna* shall not appear at the return day contained therein, the complainant shall be at liberty to proceed *ex parte.*

LXVI.

All testimony in suits in equity shall be by depositions taken under a commission, or in such other manner as the Court shall direct.

LXVII.

The practice in suits in equity will from time to time be regulated by the Court as occasion may require; but its general outline will be according to the course of practice in the Supreme Court of the U. S.

LXVIII.

In all cases of seizures for forfeitures, and other proceedings *in rem*, the claimant shall verify his claim of property by affidavit; and in cases not otherwise provided for by statute, shall file a stipulation to prosecute his claim, and to pay all costs which shall be awarded against him in case he fails to support his claim.

LXIX.

No papers or records filed in Court, or in the Clerk's office, shall be taken therefrom, unless by special leave of the Court; but the parties may at all times have copies.

LXX.

The Clerk shall make a memorandum on his docket, of the day on which any judgment is entered.

LXXI.

Where no special award of judgment is otherwise made, judgment shall be entered up as of the last day of the term.

LXXII.

On indictments found by the Grand Jury, the Clerk shall without delay issue a *capias*, *ex officio*. And where default is made by any parties bound by recognizance in any criminal proceeding, the Clerk shall immediately issue a *scire facias* thereon returnable to the next term.

LXXIII.

In appellate causes the parties may have leave to amend in matters of form, at any time before judgment or decree, as of course; but in matters of substance, the parties (except the United States) shall not have leave to amend except on payment of costs; and in appellate causes where the United States are a party, and have leave to amend, the Court will, in their discretion, impose terms as to costs, in case the United States shall recover.

LXXIV.

New allegations, in admiralty causes, may be filed in the appellate Court, under special circumstances.

LXXV.

The form of executions in all suits whatsoever shall be the same as are now used in this Court, except in cases where the Court shall otherwise direct.

LXXVI.

If after service of *subpœna*, and payment or tender of fees for necessary expenses, the witnesses summoned do not appear to give evidence, the Court will on motion award an attachment.

Circuit Court of the United States for the first Circuit.

RULES

IN CIVIL CAUSES OF ADMIRALTY AND MARITIME JURISDICTION*.

I.

In all suits of admiralty and maritime jurisdiction, amendments in matters of form may be had at any time, on motion as of course. And new counts may be filed, and amendments in matters of substance, may be had upon such terms as the Court shall impose, at any time before the final decree. And if any defect of form be set down upon special demurrer or exception, the court may, in granting the amendments, impose terms. Cockb. Ecc. Pr. 20. s. 5.

II.

No warrant of arrest, either of persons or of property, in cases of debt exceeding $ 500, and arising under the admiralty and maritime jurisdiction, shall issue without an affidavit of the debt, being previously made by the person on whose behalf such warrant is prayed, or his lawful attorney. Marriot Forms. 31.

* These Rules, though issued by the authority of the Circuit Court, being made by both Judges, are held to apply to the District Court in admiralty cases.

III.

On warrants to arrest the person in admiralty and maritime causes, if the bail be taken by the Marshal or his deputy, or other person serving the same, it shall be sufficient for the appearance of the defendant, on the return day, to answer to the plaintiff in a cause civil and maritime. And nothing shall in such case be deemed a legal appearance, but the party's appearance at the return day of the warrant, and submitting himself for commitment, or giving a stipulation, with sureties, according to the course of the court, with condition, that the defendant shall answer the said action, and ratify the acts of his proctor; and that he and his sureties shall abide all interlocutory orders and decrees, as well as the final judgment rendered in the cause by the district court, or on appeal by any appellate court; and likewise pay whatever shall be adjudged therein, and costs and expenses; and unless they shall so do, that they severally consent that execution shall issue forth against them, their heirs, executors and administrators, goods, chattels and *lands*, wheresoever the same shall be found, to the value of the sum in which they shall stipulate.

Clerk. Pr. tit. 4. 5.

Cler. Pr. tit. 12. Marr. Forms. 272. 317. 2 Bro. Civ. & Ad. 407. 408. 409. 434.

IV.

At the time of entering into the stipulation as aforesaid, on motion of the sureties, the court will direct the defendant to file a stipulation to indemnify them.

Cler. Pr. tit. 18.

V.

In proper cases the court will permit the defendant to give the juratory caution or stipulation, and also permit the defendant to change his sureties and give a new stipulation.

Cler. Pr. tit. 5.

VI.

In proper cases, as of death, insolvency, &c. of the sureties, the court may, on motion of the plaintiff, require the defendant to give a new stipulation; and in default thereof, will decree the original stipulation forfeited. Cler. Prax. tit. 13. 15. 16. 2 Brown. Civ. & Ad. 412.

VII.

On motion of the defendant, the court will direct the plaintiff, (except where the suit is for the United States,) on pain of dismissing his libel, to give a stipulation with sureties, to appear from time to time, and abide all interlocutory orders and decrees, as well as the final judgment, which may be rendered in the cause, in the district court, or on appeal in the appellate court, and likewise to pay the costs which shall be adjudged therein against him, in case he fails to support the same cause*. Cler. Prax. tit. 14. 2 Brown. Civ. and Ad. 410.

VIII.

If after warrant of arrest executed, the defendant do not appear at the return day, or if after appearance the defendant absent himself, he shall be deemed in default and contumacy. And the court will thereupon deem his bail or stipulation, (as the case may be) forfeited; and will further proceed to a hearing of the cause, *ex parte*, and pronounce the proper decree, unless further time shall for good cause be allowed by the court.

IX.

In admiralty and maritime suits, if a party against whom a warrant of arrest issues cannot be found, and return thereof be made, the plaintiff may have a war- Cler. Prax. tit. 23. 32.

* This rule is never applied to libels brought by seamen. They are considered as a privileged class in the admiralty.

rant to attach the property of the defendant, and at his option may have inserted therein a clause of foreign attachment, according to the course of the admiralty.

X.

Cler. Pr. tit. 28. note tit. 37.

In all cases of attachment under admiralty process, the attachment may be dissolved, on the party's giving a stipulation with sureties, to the same effect as in cases of arrest.

XI.

Cler. Pr. tit. 31,

In all cases of attachment of property as aforesaid, if the defendant appear, the same proceedings may be had as in other cases. And if the defendant make default, he shall be deemed in contumacy and default, and unless further time be allowed by the court, the court will proceed *ex parte*, and pronounce the proper decree.

XII.

Cler. Pr. tit. 34.

In all foreign attachments, if the garnishee appear, he shall give a stipulation with sureties in the same manner as other defendants, and he may be examined on oath touching the property in his hands, or the facts may at the plaintiff's election be proved by the plaintiff *aliunde*, according to the course of the admiralty. And if the garnishee be dismissed, he shall be entitled to full costs; and if the garnishee shall, before or after appearance make default, unless the court shall allow further time, he shall be adjudged in contumacy and default, and the default shall be deemed an admission of property in his hands to the amount of the plaintiff's debt, and recoverable accordingly.

XIII.

In all cases of seizure and proceedings *in rem*, (unless where any statute otherwise directs) the warrant of arrest shall (until altered) be in the form, now in use in the district court, and shall be served by arrest of the property, and causing the substance of such warrant to be printed in some newspaper, published near the place of seizure, and also by posting up the same in the most public manner, at or near the place of trial, for the space of 14 days before the return day, unless a shorter time shall be directed by the court.

See 4 vol. U.S.L. p. 427. s. 89.

XIV.

In all cases of proceedings *in rem*, the claimant shall verify his claim of property by affidavit, and in such cases, (unless where it is otherwise provided by statute) he shall file a stipulation with sureties, for the payment of all costs which shall be decreed against him, as well in the district court, as on appeal in the appellate court, in case he shall fail to support his claim.

XV.

In all proceedings *in rem*, where the property is perishable, the court will, on application of either party, direct an appraisement and delivery, on payment of the value into court, or a sale, as the circumstances may require.

Cler. Pr. tit. 43. Parker. Rep. 70.

XVI.

In proceedings *in rem*, where the case is not otherwise provided for by statute, the court will, in its discretion, deliver the property to the claimant, on giving a stipulation with sureties, without delay to pay the amount of the appraised value of such property

Parker. Rep. 196. 4 Cranch. 2.

into court, or so much as the court shall order or decree, whenever the same shall be ordered or decreed by the district court, or on appeal by the appellate court without delay; and if such payment be not made within ten days after such order or decree, and no appeal intervene in the principal cause, the court will direct execution immediately to issue of course against all the parties to such stipulation.

XVII.

2 Brown. Civ. and Ad. 416. Clerk. Pr. tit. 14. 24. Marr. For. 363.

The plaintiff shall have a right in suits of admiralty and maritime jurisdiction, to require the personal answer of the defendant on oath, to interrogatories to be filed by him in court, touching the allegations contained in the libel, or any other matter or thing by him suggested and filed, which shall be relevant to the suit.

XVIII.

2 Bro. Civ. and Ad. 416. Cler. Pr. tit. 14. 24.

In like manner, the defendant shall in like suits, (except where the United States are plaintiffs) have a right to require the personal answer of the plaintiff on oath, to interrogatories filed in court, touching any matter of defence or exception, or any other allegation by him filed, which shall be relevant to the suit.

XIX.

Either party may object to answering any interrogatory, the answer to which will expose him to a penalty, forfeiture, or punishment for a crime.

XX.

Marriot. Form. 350. Cl. Pr. tit. 24.

If either party be decreed to give a personal answer, and refuse or neglect so to do, such party shall be deemed in contumacy and default, and if the party be plaintiff, the suit shall be dismissed; if defen-

dant, the allegations in the libel shall be taken *pro confesso*, and the court will thereupon hear the cause and adjudge the same *ex parte*. But if the other party prefer, he may proceed by attachment to compel such answer.

XXI.

In all admiralty suits where commissions are directed to issue, to take depositions in a foreign country, the commissions will be by letters rogatory *sub mutuae vicissitudinis obtentu*, &c. unless the court shall otherwise direct and order. And no commissions to take depositions shall issue, until the party praying for it shall have filed his interrogatories, at least ten days in the clerk's office, so that the opposite party may have opportunity to file cross interrogatories.

2 Bro. Civ. p. 4. 225. Cler. Pr. tit. 19. 27.

XXII.

If upon due service of process of service of *subpœna*, the witnesses do not appear to give evidence, and their fees for necessary expenses have been paid or tendered, the court will on motion award an attachment.

Cler. Pr. tit. 26. Marr. For. 344.

XXIII.

If in admiralty and maritime suits, the plaintiff does not appear and prosecute his suit, or neglect to comply with the orders of the court, he shall be deemed in contumacy, and to have deserted his suit, and the defendant shall be dismissed with costs.

XXIV.

If in like causes the defendant do not appear and prosecure his defence, or neglect to comply with the orders of the court, he shall be deemed in contumacy and default, and the court will proceed to hear the cause *ex parte*, and to pronounce the proper decree.

Cl. Pr, tit. 34. 35- and Rought, art. p. 159. sub. finem.

XXV.

In admiralty and maritime suits *in personam*, where a stipulation has been filed in court, if the decree be against the defendant, and the same be not satisfied within ten days after such decree in case no appeal intervene, the court will thereupon direct execution to issue against all the parties to such stipulation, as of course without further delay. And in no case shall a surrender of the principal be deemed a discharge of such stipulation, unless by consent of the plaintiff.

Malynes, Lex. Merc. ch. 18. 2 Brown. 356.

XXVI.

If any third person intervene in an admiralty and maritime suit *in rem*, he shall give a stipulation, with sureties, to ratify the acts of his proctor, to abide as well the interlocutory orders or decrees as the final judgment of the court, and to pay the costs in the district court, or on appeal in the appellate court, in case he shall fail to support his claim. And in cases where a decree of possession or first decree shall have passed before the intervention of such claim, the party so intervening shall first pay the costs of the plaintiff, in the preceding proceedings, and if the plaintiff be not then before the court, a citation shall thereupon issue to call him in. And in case of such intervention, on motion of the defendant, the court will direct the plaintiff to give a like stipulation to the intervener, as in common cases to the defendant.

Cler. Pr. tit. 38. 2 Bro. Civ. &c. 428. Cler. Pr. tit. 39, &c. 2 Brown. Civ. &c. 429. Cock. Ecc. Law 20. s. 6. Cler. Prax. tit. 38.

XXVII.

If in possessory suits after decree for either party, the other shall make application to the court for a proceeding in a petitory suit, the property shall not be delivered over to the prevailing party, until after an appraisement made, nor until he shall give a stipulation with sureties, to restore the same property

Clar. Pr. tit. 42.

without waste, in case his adversary shall prevail in the petitory suit, and also to abide as well all interlocutory orders and decrees, as the final sentence and decree of the district court, and on appeal, of the appellate court, and pay the costs.

XXVIII.

Stipulations in admiralty and maritime suits may be given in open court, or before such commissioner or commissioners, as shall be duly authorised by the court for that purpose. Marr. Forms. 309. 313.